United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

76-1437

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

GEROALD J. BROWN,

Appellant.

APPENDIX

B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against- 76-CR-13

ANTHONY L. CAVALLARO and
GERALD J. BROWN,

Defendants.

Proceedings in the above-entitled matter came on before the United States District Court, Northern District of New York, Federal Building, Auburn, New York, July 9, 1976, before the Honorable Lloyd F. MacMahon, United States District Judge, sitting by designation.

- - -

THE CLERK: United States of America versus Anthony L. Cavallaro and Gerald J. Brown.

Is the Government ready?

MR. PAVONE: Ready.

THE CLERK: Are the defendants ready?

MR. SCELSI: Ready, Your Honor.

MR. FEINER: Ready, Your Honor.

THE COURT: Proceed.

THE CLERK: Ladies and gentlemen, as your name is called, please take a seat in the jury box.

Beverly J. Hessler, Beverly M. King, Donald C. Weekes, Kathleen J. Ryan, John Rosenthal, Richard L. Plante, Beverly M. Brooker,, Joseph J. Shaw, Mary J. Brown, Sally Jones, Loretta Powers, Columbia Armenia.

THE COURT: Good morning. This is a case in which the defendants, Anthony L. Cavallaro and Gerald J. Brown have been indicted and charged with kidnapping Mary Shepardson.

Now, I will charge you later in greater detail on the law, but in essence, the charge is kidnapping.

Do any of you know Anthony L. Cavallaro, Gerald J. Brown or Mary Shepardson?

(Negative responses).

Do any of you know Mr. Joseph Scelsi who represents the defendant, Cavallaro?

Stand up, Mr. Scelsi.

MR. SCELSI: I have Mr. Palino from my office here.

THE COURT: Do any of you know them?

(Negative responses).

THE COURT: And do any of you know Mr. Stewart Feiner who represents Mr. Brown?

(Negative responses).

And would each of the defendants stand. Which is Mr. Brown?

DEFENDANT BROWN: Yes, sir.

THE COURT: And you are Mr. Cavallaro?

DEFENDANT CAVALIARO: Yes, sir

THE COURT: I know I have put these questions to you many times, but the lawyers weren't here to know what your answers were, so I have to put them to you again.

Have any of you ever worked for any law enforcement agency?

(Negative responses).

Do any of you have any close relatives who work for any law enforcement agencies?

(Negative responses).

Have any of you ever been the victims of a crime?

(Negative responses).

Do any of you have any close relatives who have been victims of a crime?

(Negative responses).

THE COURT: Is there any experience that you have had as a juror here or before that which would in any way influence your decision in this case?

(Juror Number 4 raises hand).

THE COURT: Yes, Miss Ryan?

JUROR, SEAT NUMBER 4: May I approach the bench?

THE COURT: Yes, sure.

(The following was an on-the-record discussion at the bench):

JUROR, SEAT NUMBER 4: I was the victim in a rape case.

THE COURT: How long ago was this?

JUROR, SEAT NUMBER 4: Three months

ago.

THE COURT: She said she was the victim of a rape case.

I will excuse you, Miss Ryan, for the reason which you have disclosed on the record which, I am sure, would make you unable to be fair in this case.

JUROR, SEAT NUMBER 4: Okay.

THE CLERK: Roland L. Boda.

THE COURT: Mr. Boda, have you heard what I have said so far and the questions that I have asked, and do you have anything to say in answer to any of the questions?

JUROR, SEAT NUMBER 4: No, sir.

THE COURT: Do any of you know of any reason why you couldn't sit on this jury? Do any of you know Mr. James Sullivan, the United States Attorney in this district?

(Negative responses).

Or Mr. Joseph Pavone, Assistant United States Attorney who will be in charge of this prosecution?

(Negative responses).

Do any of you know of any reason why you couldn't sit on this jury and be fair and

impartial and base your verdict on the law and on the evidence?

(Negative responses).

Beginning with Mrs. Hessler, would you tell me what you do and what your husband does?

JUROR, SEAT NUMBER 1: I am a housewife. My husband is with Sylvania in Seneca Falls and he is a development engineer.

THE COURT: And Mrs. King?

JUROR, SEAT NUMBER 2: I am a housewife and my husband is self-employed in plumbing and heating.

THE COURT: And Mr. Weekes?

JUROR, SEAT NUMBER 3: I am a maintenance mechanic at Cornell University. My wife also works there.

THE COURT: Mr. Boda?

JUROR, SEAT NUMBER 4: Laboratory mechanic, Cornell University. My wife is a nurse at Ithaca College.

THE COURT: And Mrs. Rosenthal?

JUROR, SEAT NUMBER 5: Mathematician. I teach at the college. My wife is a housewife. She had previously been an elementary school teacher at Newfield Central Schools.

THE COURT: Mr. Plante?

JUROR, SEAT NUMBER 6: I am employed by Brockway Motor Trucks in Cortland, New York and my title is Supervisor of Safety and Security. My duties also involve labor relations. My wife is employed at the State University also in Cortland as a clerk typist.

THE COURT: And Mrs. Brooker?

JUROR, SEAT NUMBER 7: I work in the accounting office at Cresent Corset in Cortland, New York, and my husband works in the maintenance department at Smith-Corona.

THE COURT: Mr. Shaw?

JUROR, SEAT NUMBER 8: I am a retired sales manager for Sunshine Biscuit. My wife is a housewife.

THE COURT: And Mrs. Brown?

JUROR, SEAT NUMBER 9: I am a housewife. My husband is retired but he used to work at Columbian Rope.

THE COURT: Mrs. Jones?

JUROR, SEAT NUMBER 10: I am a domestic worker and my husband is separated. He was at Columbian Rope but we are separated.

MR. SCELSI: I can't hear her.

THE COURT: She said she is a domestic worker and separated and her husband did work for Columbian Rope.

Mrs. Powers?

JUROR, SEAT NUMBER 11: Mother and housewife. My husband is a plumber with Harrison-Deekes here in Auburn.

THE COURT: And Mrs. Armenia?

JUROR, SEAT NUMBER 12: I am a housewife. My husband is retired from Hose Chain Company in Ithaca.

THE COURT: Very good.

THE CLERK: Challenges for cause, Government?

MR. PAVONE: No challenges for cause.

THE CLERK: Challenges for cause, Defendants?

MR. SCELSI: No challenges for cause.

MR. FLIHER: No challenges for cause.

THE CLERK: Pre-emptories?

(Pre-emptory challenges were taken).

THE CLERK: The Government waives its first challenge?

MR. PAVONE: Yes.

THE CLERK: Richard L. Plante and Sally Jones, please step down.

Anna M. Wood, please take Juror Seat Number 6. Esther Winslow, please take Juror Seat Number 10.

THE COURT: Do either of you have anything to say in answer to any of the questions I have asked the other jurors?

JUROR, SEAT NUMBER 6: I have a cousin who is a State Trooper in Canandaigua and a brother who is Chief of Police in New Hartford.

THE COURT: Is there anything about those facts that would influence you in this case?

JUROR, SEAT NUMBER 6: No.

THE COURT: And Miss Winslow, do you have anything to say?

JUROR, SEAT NUMBER 10: No.

THE COURT: Can each of you tell me what you do and what your husbands do?

JUROR, SEAT NUMBER 6: I work at General Electric. My husband is retired on disability from Alco.

JUROR, SEAT NUMBER 10: I am a part-time secretary on call for the Homer School

and for John McNeil Engineering Firm, and my husband is a part-time camp manager.

THE CLERK: Challenges for cause, Government?

MR. PAVONE: No challenges for cause.

THE CLERK: Challenges for cause, Defendants?

MR. SCELSI: Mrs. Wood for cause. I couldn't hear her too well, but I believe I heard her mention she was involved with some relative being in the State Police.

THE COURT: Yes, she has relatives with the State Police. Are the State Police involved in this case in any way?

MR. SCELSI: I think they are, Your Honor, yes, sir.

MR. PAVONE: Your Honor, I understand that the State Police did have a part in some of it.

THE COURT: All right, you are excused, Mrs. Wood.

Call T. Wiant.

THE COURT: Good morning, Mr. Wiant Do you have anything to say in answer to any of th

questions I have asked the others?

JUROR, SEAT NUMBER 6: No.

THE COURT: And you are a minister, Mr. Wiant?

JUROR, SEAT NUMBER 6: That's right.

THE COURT: In Homer?

JUROR, SEAT NUMBER 6: In Homer, right.

THE COURT: And are you married?

JUROR, SEAT NUMBER 6: Yes, sir.

THE COURT: Is your wife a housewife?

JUROR, SEAT NUMBER 6: She works at BOCES.

THE COURT: I see.

THE CLERK: Challenges for cause, Government?

MR. PAVONE: None.

THE CLERK: For cause, Defendants?

MR. SCELSI: I apologize. I didn't hear what his occupation was.

THE COURT: He is a minister.

MR. SCELSI: A minister. I would feel for cause, Your Honor, because this matter does involve kidnapping which is a crime.

THE COURT: I suppose that would disqualify him in any criminal case. Denied.

THE CLERK: Pre-emptories?

(Pre-emptory challenges were taken).

THE CLERK: The Government waives its second challenge?

MR. PAVONE: That's correct.

THE CLERK: The defense waives its fourth challenge?

MR. SCELSI: Yes, Your Honor.

THE CLERK: Max Wiant, please step down.

Mary Lou Forger, please take Juror Seat Number 6.

THE COURT: Mrs. Forger, do you have anything to say in answer to any of the questions that I have asked the others?

JUROR, SEAT NUMBER 6: No.

THE COURT: And you are a housewife?

JUROR, SEAT NUMBER 6: I am a teacher's aide at Port Byron Central School.

THE COURT: I'm sorry?

JUROR, SEAT NUMBER 6: I am a teacher's aide at Port Byron Central School and a

housewife.

THE COURT: What does your husband do?

JUROR, SEAT NUMBER 6: He is a truck driver for A. R. Guntry in Syracuse.

THE CLERK: Challenges for cause, Government?

MR. PAVONE: No challenges for cause.

THE CLERK: For cause, Defendants?

MR. SCELSI: None.

MR. FEINER: None.

THE CLERK: Pre-emptories?

MR. PAVONE: We will waive.

THE CLERK: And defendants waive their fifth and sixth challenges?

MR. SCELSI: Yes.

MR. FEINER: Yes.

THE CLERK: The jury is satisfactory to both sides?

MR. PAVONE: Satisfactory.

MR. SCELSI: Satisfactory.

MR. FEINER: Satisfactory.

THE COURT: Select two alternates.

THE CLERK: Clara O. Weise,

Alternate Seat 1 and Carol Czolowski, Alternate Seat Number 2.

THE COURT: Do either of you ladies have anything to say in answer to the questions I put to the others?

(Negative responses).

THE COURT: Could each of you tell me what you do and what your husbands do if you are married.

ALTERNATE NUMBER 1: I am a housewife and my husband is a teacher at the Ithaca School System.

THE COURT: What does he teach?

ALTERNATE NUMBER 1: Health and physical education.

ALTERNATE NUMBER 2: I am a housewife. My husband is employed by The New York Telephone Company as a switchman.

THE CLERK: Challenges for cause, Government?

MR. PAVONE: No challenges for cause.

THE CLERK: For cause, Defendants?

MR. SCELSI: No challenges for cause.

MR. FAHNER: None for cause.

THE CLERK: Pre-emptories?

(None were taken).

THE CLERK: The Government waives its alternate challenge?

MR. PAVONE: We do.

THE CLERK: The Defendants waive the alternate challenge?

MR. SCELSI: Yes.

MR. FAHNER: Yes.

THE CLERK: The alternates are satisfactory to both sides?

MR. PAVONE: Satisfactory.

MR. SCELSI: Satisfactory.

MR. FAHNER: Satisfactory.

(The jurors were sworn).

THE COURT: The jury may take a short recess.

(Jury leaves courtroom).

THE CLERK: Would Counsel come up to the bench, please.

(The following was an on-the-record discussion at the bench).

MR. PAVONE: We have got one problem, Your Honor, with one of the Government

witnesses, the kidnapping victim herself, Mary Shepardson. Shortly after this incident took place she was relocated under the witness protection program and I would ask that the Court direct Counsel not to inquire of her present whereabouts or her present address.

THE COURT: Well, I can't direct him not to, but if you represent that she has been relocated -- were there any threats on her life?

MR. PAVONE: Your Honor, there were some problems immediately after this incident took place, apparently. There is a tremendous fear on the part of the witness.

THE COURT: But what overt problems were there?

I don't see why it matters to you anyway where she lives.

MR. SCELSI: Well, it may.

THE COURT: If you agree not to ask the question we have no problem.

MR. SCELSI: I don't agree. I don't think there were any overt acts or anything whatever.

THE COURT: Well, what do you need to ask the question for anyway? What does it matter

where she lives now or what her telephone number is now or anything about her now? How is it in any way material to this case?

MR. SCELSI: Well, I am maybe not concerned where she is, but I certainly feel that --

THE COURT: How is it in any way material?

MR. SCELSI: Her being secreted may have been a disadvantage to the defense too, making her unavailable for any investigation as to her allegations and so forth. We haven't been ab -- she just disappeared after this and I have never known of her whereabouts until today if she is here in Court.

THE COURT: Tell me how it is material now.

MR. FEINER: It may come up, Your Honor, as to questions regarding her credibility as to having been made an offer or something in return for her testimony.

THE COURT: It is pretty hard for me to rule on it in a vacuum, so I would tell you not to ask the questions unless you feel it is absolutely necessary.

When he asks them, you object.

MR. PAVONE: Yes, sir.

THE COURT: And I will sustain the objection and we will dismiss the jury and we will hear what her answer is in camera. But that might not be too good. The whole idea is not to disclose her whereabouts. And I don't see any materiality. Unless you can demonstrate some materiality, which you certainly haven't done now, I don't see how it is material in any way where she has been, what she is doing now or any clue to her whereabouts at this time.

MR. SCELSI: Well, I am really not concerned where she is presently. I could care less. But I think the fact is important. Once this incident occurred, the Government, whether rightly or wrongly, just whisked this woman away.

THE COURT: You may be right that she hasn't been available for you to interview, that fact, for what it is worth.

MR. SCELSI: All right. While we are on the subject, there are many extraneous matters included in this. This was a transaction that started maybe a week before the incident that

carried on, and I think there is going to be a lot of material that we think is prejudicial.

THE COURT: Well, again, I can't rule on that in a vacuum.

MR. SCELSI: No.

THE COURT: I have to hear it to know whether it is prejudicial. But you know where those areas are.

MR. SCELSI: Yes.

THE COURT: And certainly you ought to, Mr. Pavone.

MR. PAVONE: Yes, I think I may understand Counsel's request.

THE COURT: And specifically, what is it, can you tell me?

MR. PAVONE: Well, probably.

THE COURT: Where were you guys with all these problems when I had you in last week so we wouldn't waste trial time to find out what they were, problems of this kind. Both of you said we haven't got anything.

MR. FEINER: Some of these came up, Your Honor, after we saw the testimony of witnesses who are testifying today. We didn't see that until this morning.

THE COURT: I see.

MR. PAVONE: Your Honor, probably the thing Counsel is concerned the most about is that one witness is a witness by the name of Mr. Samson who was assaulted by the defendants in this case immediately after the kidnapping took place, and we would proper that testimony. Mr. Samson's testimony would be a concise series of events to show the defendants' intent and motive.

THE COURT: Would you have any objection to making opening statements today and starting presenting the evidence on Monday? We were here until midnight, some of the people on the jury, last night.

MR. PAVONE: Your Honor, of course, I would have no objection to that, but perhaps it would be better if we made the opening statements right before we started taking testimony.

THE COURT: Well, I want to use as much time as we can. Do you have any witnesses who have come from any distance?

MR. PAVONE: Most of the witnesses are from the Binghamton area, Your Honor. They wouldn't have any problem coming back, I am sure.

THE COURT: Well, let's go a little ways and see how it goes. But you know, the jury is tired. They were here until midnight last night on a difficult case, and so was I.

MR. PAVONE: Whatever the Court's pleasure is is acceptable to us.

THE COURT: Well, we will go ahead and see.

MR. SCELSI: I would just as soon wait for my openin, until after the People put in their proof, if that is possible.

THE COURT: We don't do it that way. Either you open now or waive.

MR. SCELSI: All right.

MR. PAVONE: I beg your pardon. I was under the impression that you could. We did discuss it. I stand corrected.

MR. SCELSI: That's okay.

THE COURT: I think that gets too confusing.

(Jury enters courtroom at 11:10 a.m.).

THE COURT: All right, proceed.

MR. PAVONE: May it please the Court, good morning, ladies and gentlemen. By way

the testimony and the facts and the charge of His Honor, who will eloquently tell you what the law is, you will find that the kidnapping in this particular case there was not kidnapping. I am not going to call it a conspiracy, but I think that this is what it was on the part of the Government to get these people for a crime they didn't commit because of maybe extraneous factors and pushing and talking to witnesses and building their case with the help of the F.B.I.. Thank you very much.

THE COURT: All right, Mr. Pavone.

MR. PAVONE: I call Mary Shepardson, please, Your Honor.

MARY SHEPARDSON,

having been called as a witness in behalf of the Government, was first duly sworn according to law and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Miss Shepardson, how old are you?

A Twenty-four.

THE COURT: Please keep your voice up, Miss Shepardson.

Q Are you married?

THE COURT: See if you can make it bounce right off that back wall so everybody can hear you.

A Yes -- no, I am not married.

Q Which is it?

A I am not married.

Q Now, are you appearing in Court here today pursuant to a subpoena?

A Yes.

Q Miss Shepardson, were you living in the Binghamton area around December 1975?

A Yes.

Q Where were you living at that time?

A I was living in Trailer Village.

Q Whereabouts is that?

A That is in Endicott.

Q You were living in a trailer?

A Yes.

Q Did you live alone?

A I lived there with my son

Q How old is your son?

A Two

Q And at that time how old was he?

A He was about a year and a half.

Q Are you acquainted with a girl by the name of

Debbie Buchanan?

A Yes.

Q How did you become acquainted with Debbie Buchanan?

A I met her in a restaurant through her aunt where I was working.

THE COURT: Can you get your voice up a little more? We have got Mrs. Powers back there who has to strain to hear you.

Q Do you consider her a friend?

A Yes.

Q Now, Miss Shepardson, I would like to direct your attention to the day of December 10th, 1975. Did you have occasion to visit Debbie Buchanan's house at that time?

A Yes, I did.

Q Where did Debbie live?

A She lived on 5 Camden Street.

Q Where is that located?

A That is in the Endwell area.

Q Is that a house or an apartment or what?

A It is an apartment house.

Q Did anybody else live there with Debbie?

A Dick Finch.

Q You said it was an apartment house?

A Yes.

Q How many more apartments were there?

A I think there were two or three more apartments.

Q And who lived in the other apartments, do you know?

A Dick Samson, and the other apartment, I guess, downstairs was his father, but he didn't live there, and some --

Q I'm sorry?

A And somebody else lived there.

Q Mary, could you keep your voice up?

THE COURT: If you want to move your chair up here where you can hear, I understand the difficulty. The acoustics are very bad and the witness doesn't keep her voice up. I have asked her twice.

Please try to speak louder because it is awfully hard to hear.

MR. SCELSI: I apologize, but I can hardly hear her.

THE COURT: That's all right, no apology is necessary. You have to hear in order to do your job.

MR. SCELSI: Thank you.

THE COURT: All right.

BY MR. PAVONE:

Q Now, where did Dick Samson live?

A Five Camden Street.

Q In the upstairs apartment?

A Right.

Q Above Debbie's house?

A Right.

Q Now, did you know Dick Samson?

A Yes, I did.

Q How did you meet him?

A I met Dick through Debbie.

Q Did you consider him a friend of yours?

A Yes, I did.

Q Now, Miss Shepardson, in getting back to the day of December 10th, 1975, why did you go to Debbie's house?

A Because Debbie was my babysitter.

Q You went to her to babysit for you?

A Yes.

Q And what did you intend to do?

A I was going to go to work and I was going to go down to welfare.

Q And what were you doing at welfare?

A I was going to try to get some money so I could get some fuel in my trailer.

Q You didn't have any fuel for the trailer?

A No, I didn't.

Q Okay. So what did you do when you got to Debbie's house?

A I went and I was hitchhiking, I went out to go to welfare and she was watching the baby, and then I went down to welfare.

THE COURT: What time was this?

THE WITNESS: It was about 10:30 in the morning.

THE COURT: When, what day?

THE WITNESS: I don't know, I can't remember.

BY MR. PAVONE:

Q Do you remember the month?

A It was in December.

Q Was it a weekend or weekday?

A It was a weekday.

Q Now, who else was home besides Debbie, anybody?

A Her boyfriend was home.

MR. SCELSI: I object to any testimony if she doesn't know what time in December she is talking about.

THE COURT: Overruled.

BY MR. PAVONE:

Q Was anybody home besides Debbie when you went over there?

A Yes, her boyfriend.

Q What is his name?

A Dick Finch.

Q Do you know where he was living?

A Pardon me?

Q Do you know where he was living at that time?

A He was living there too, at 5 Camden.

Q Five Camden Street?

A Right.

Q Now, tell us how you got to the welfare office?

A I was hitchhiking down there.

Q And did you get a ride?

A Yes.

Q Who picked you up, did you know the people who picked you up?

A I knew Tony Cavallaro picked me up.

Q Was he alone?

A No.

Q Did you accept a ride from Tony Cavallaro?

A Yes, I did.

THE COURT: Did you know him before this?

THE WITNESS: Yes.

THE COURT: How long did you know him before this?

THE WITNESS: Maybe a year, if that.

THE COURT: How did you know him?

THE WITNESS: Through Dave Bair.

THE COURT: Socially?

THE WITNESS: Yes.

THE COURT: Had you been out with him?

THE WITNESS: No.

THE COURT: Never had a date with him?

THE WITNESS: No.

BY MR. PAVONE:

Q Now, what did you do after you went to the welfare office, Miss Shepardson?

A I came back and they wouldn't give me any money for my fuel, so I had Dick Finch take me to look for fuel for the trailer.

Q Were you successful in finding fuel for the trailer?

A No, we couldn't get a can.

Q So what did you do then?

A So I just came back and Debbie -- I was upset about the fuel and Debbie told me to just stay there with her and --

Q Did you stay at Debbie's house all afternoon?

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A I stayed with Debbie, yes.

Q Did you go out by yourself after that?

A Yes.

Q Where did you go then?

A I went to the grocery store to get some food in the house.

Q And what did you do when you got back from the grocery store?

A When I came back, Debbie was there at the door and she asked me if I was all right and I asked her why, and then she told me why.

Q What did she say to you?

A She said --

MR. SCELSI: Your Honor, this is hearsay, I object to it.

THE COURT: Sustained.

BY MR. PAVONE:

Q Miss Shepardson, what happened next when you got home? Debbie was there.

A Debbie was there and she told me about a phone call she had received.

Q Did the phone call involve you in any way?

A She just told me to stay there, that, you know, that Dave had been beaten up and somebody wanted some information.

THE COURT: Sustained. Strike it out.

MR. PAVONE: Excuse me, Your Honor, but I think the statement is admissible as intending to show the situation leading up to the time that --

THE COURT: It is hearsay. Next question.

MR. PAVONE: Yes, sir.

BY MR. PAVONE:

Q What happened next, iss Shepardson?

A Debbie told me to just stay there, to say in the house.

Q And did you stay at the house?

A Yes.

Q And did you receive a visitor at that time or later on, did somebody come to call on you at Debbie's house that afternoon?

A Yes, they did.

Q Do you know who that person was?

A I had never seen him before.

Q Did you subsequently learn who he was?

A Yes.

Q Can you describe him?

A He was tall and big and had kind of brownish hair.

Q Would you look around the Courtroom, please, Miss Shepardson, and tell me if you can identify that man who came to call on you that afternoon at Debbie's house?

A Yes.

Q Do you recognize him?

A Yes.

Q Do you recognize him?

A Yes.

Q Can you indicate to me where he is sitting, please?

THE COURT: What is he wearing?

THE WITNESS: A yellow shirt.

BY MR. PAVONE:

Q Can you see him from where you are sitting?

THE COURT: Stand up so you can see everyone. Do you see the man?

THE WITNESS: No.

BY MR. PAVONE:

Q You don't see the man?

A No.

Q Do you recognize Anthony Cavallaro in the Courtroom today?

A Yes.

Q Can you tell me where he is sitting?

A There with the blue shirt on.

THE COURT: Let the record reflect that she has identified Cavallaro.

MR. PAVONE: Thank you, Your Honor.

Q Now, Mary, do you recognize the man who called upon you that afternoon in the Courtroom?

A No.

Q Can you describe him for me, please, as best you can recall?

A He weighed about, maybe 180 pounds, maybe not that much, maybe about 175 pounds.

Q And what did he say to you when he came into the house?

A He told me that --

MR. SCELSI: Your Honor, unless she can identify someone by name, I would object to this testimony. I don't know who she is referring to. I think it is --

THE COURT: Well, perhaps he will be identified later. I will take it subject to connection. Proceed.

MR. PAVONE: Thank you.

BY MR. PAVONE:

Q Will you tell me what this man said to you?

A He told me to come outside, that Dave Bair was out there and that he wanted to talk to me.

MR. SCELSI: Your Honor, again, that would be hearsay.

THE COURT: I will take it for the fact that it was said and not for the truth of it. Go ahead.

Q Then what happened next, Mary, please, if you will tell the Court?

A Then he told me, he says, "Get in the car", and he says, "We are going to go for a ride".

Q Now, was anybody in the car when you went out to the car?

A Yes.

Q Who was in the car?

A Dave Bair and Tony Cavallaro.

Q Where was Dave Bair sitting?

A In the back seat.

Q Where was Tony Cavallaro sitting?

A He was driving.

Q Now, did you notice anything unusual about the appearance of Dave Bair?

A Well, his face looked swollen and he --

MR. SCELSI: Your Honor, this is immaterial and irrelevant.

THE COURT: I would like an offer of proof.

MR. PAVONE: Your Honor, it just set the scene.

THE COURT: Please, up here with an offer of proof.

(The following was an on-the-record discussion at the bench).

THE COURT: Who is Dave Bair?

MR. PAVONE: Your Honor, this is an individual who was an associate of Tony Cavallaro and he was in the car on the night that Miss Shepardson was taken away for the ride to Pennsylvania. He was seen in the back seat. She will testify that his face was swollen and he appeared to have been beaten up, which tends to establish the witness's situation in connection with the trip that night, Your Honor, the seriousness of the matter.

MR. SCELSI: There is nothing in evidence as to who beat him up. He could have fallen off a step.

THE COURT: That isn't the point. The point is her state of mind. Overruled. Go ahead. Just what she observed.

MR. PAVONE: Yes, sir.

(Proceedings continue in open Court).

BY MR. PAVONE:

Q Now, Miss Shepardson, would you please tell the Court and jury what you observed in connection with Mr. Bair's appearance?

A His face looked a little swollen and he looked scared.

MR. SCELSI: Objection, Your Honor.

THE COURT: Did you know him?

THE WITNESS: Yes, I knew him.

THE COURT: How long did you know him?

THE WITNESS: I have known Dave for about a year.

BY MR. PAVONE:

Q Now, was anything said, did Tony Cavallaro say anything to you at the time you were standing by the car?

A No.

Q Did the other gentleman say anything to you at the time you were standing by the car?

A He told me to just get in and we were going to go for a ride.

Q Did he say why he wanted to go for a ride?

A He wanted to talk.

Q Did he say what he wanted to talk about?

A Not until we got in the car.

Q All right. Can you tell us what happened next? Did you get into the car?

A Yes.

Q And what happened next?

THE COURT: How did you get into the car, did you just walk into it with the other man? How did you get from the house to the car?

THE WITNESS: He told me to come out andtalk to Dave and --

THE COURT: The man did?

THE WITNESS: Right.

THE COURT: And what did you say?

THE WITNESS: I said okay, you know, I had no choice. I didn't know what was going on.

MR. SCELSI: Objection.

THE COURT: What did he say that gave you no choice, what did the man say or do?

THE WITNESS: I just thought they wanted me to talk to Dave, Dave wanted to talk to me.

THE COURT: Oh, I see. You knew Dave?

THE WITNESS: Yes.

THE COURT: I see, all right. So

you went out to talk to Dave?

THE WITNESS: Right.

BY MR. PAVONE:

Q Now, when you got into the car, what happened next?

A We started going up the highway and he started telling me about what was going to happen, then he went --

THE COURT: Who is he?

Q Who is he?

A Gerry Brown.

Q Is this the man you referred to as the big man?

A Right.

Q You didn't know him at that time, did you?

A No, I didn't.

Q Did you subsequently learn his identification?

A Yes.

Q How did that happen?

MR. SCELSI: Again, I object, Your Honor.

THE COURT: Overruled.

Q Proceed, Miss Shepardson. How did you subsequently learn the identification of the other man as Gerry Brown?

A Because the policeman showed me a number of pictures to identify.

Q And did you pick out one of the photographs?

A Yes, I did.

Q Do you recall what the policeman's name was?

A No, I don't.

Q Did any agents from The Federal Bureau of Investigation show you photo spreads of any individuals?

A Mr. Worset, then it was Lt. Avery.

Q Mr. Worset is from the F.B.I.?

A Yes.

Q And who is Mr. Avery?

A Mr. Avery is from the Broome County Police Department.

Q I see. And did you pick out a photograph for Mr. Worset?

A I don't think so, I don't think I met Mr. Worset at that time. I was with Mr. Avery and Lt. Milkes.

Q And they are from the Broome County Sheriff's Department?

A Right.

THE COURT: When was this, when did all this happen?

Q When did you speak to Lt. Avery and Lt. Milkes?

A It was the next day after I had gone for the ride.

THE COURT: All right.

Q Let's get back to the car ride, if you will, Miss

Shepardson. Did Anthony Cavallaro say anything to you during the car ride?

A Yes.

Q What did he say to you?

A He told me that he was tired of being ripped off and that he wanted -- he was tired of people lying at him.

Q Did you have any information as to what he was talking about?

A No I didn't.

Q How about the other gentleman?

A He was telling me that I had better tell the truth about what had happened and that he was hired to kill me.

Q Did he say who hired him to kill you?

A Yes.

Q Who?

A Tony Cavallaro.

Q So what happened next? Did these gentlemen display guns during the car ride?

MR. SCELSI: Same objection, Your Honor, as hearsay and so forth.

THE COURT: It isn't hearsay. Your client was there.

MR. SCELSI: They have not identified

who said it, Your Honor.

THE COURT: That doesn't make any difference. Go ahead.

BY MR. PAVONE:

Q Did these gentlemen display weapons at any time while you were in the car ride, Miss Shepardson?

A Yes.

Q Both of them?

A Yes. Just one when we were in the car.

THE COURT: Who said this to you, the man you later learned was Gerry Brown?

THE WITNESS: Yes.

THE COURT: That is the man who said it, not Dave and not --

THE WITNESS: Not Tony. Gerry Brown told me that he was hired to take care of this matter.

THE COURT: All right.

BY MR. PAVONE:

Q And what matter was that, Miss Shepardson?

A That they had been ripped off for pot and they wanted their money back.

Q I see. Now, tell us about the incident in which Mr. Cavallaro displayed a weapon.

A I was talking to Gerry Brown and just telling him

I didn't know anything about this, and Tony got mad and he told -- called me a liar and he stopped the car, and that is when he displayed the weapon.

Q What was it, a gun?

A Yes.

Q Did he point it at you?

A Yes.

Q And what did you say when he slammed on the brakes and pointed this gun at you?

A I just said, "Oh my God, I don't know anything".

Q Then did Brown say anything at that time?

A Yes, he told Tony to just cool it, that he was hired to do this, this was his job, he would take care of it.

Q Then what happened next?

A Then they drove on and told us that we were going to go to the Circle of Life and that we only had, you know, a little time to talk.

Q Did you know whereabouts you were as you were driving in the car?

A It was in Pennsylvania. I remember a sign that said, "Welcome to Pennsylvania". We were out in the country somewhere.

Q And you saw a sign that said "Welcome to Pennsylvania"?

A Yes.

Q Now, what happened as you were driving further down in the car after Tony Cavallaro had slammed on the brakes?

A Gerry Brown started talking about my son and if I ever wanted to see him again, I better tell him where these people were.

Q Did there come a time when they stopped the car again?

A Yes.

Q And what happened when they stopped the car a second time?

A They put Dave and I out in front of the car.

Q What did you say?

A They put Dave and I in front of the car.

Q And then what did they do?

A They lined us up and told us this was it.

Q Did they display weapons at that time?

A Yes.

Q They had their guns drawn?

A Yes.

Q This fellow, Mr. Brown, had a gun drawn as well?

A Yes, he did.

Q Were any shots fired?

A Yes.

Q How many shots were fired, to the best of your recollection?

A Three.

Q Do you know where they hit?

A I know one went past my elbow and he shot a couple, another at my feet.

Q Who was doing the shooting?

A Gerry Brown.

Q Did Mr. Cavallaro fire any shots?

A I don't know.

Q Was he pointing his gun at you?

A No.

Q And then what happened when Gerry Brown fired the three shots at you?

A He told Tony that I must be okay, I didn't know anything.

Q Did you get back in the car?

A Yes.

Q And then what happened?

A And then Gerry Brown told me that, you know, he just saved my life, and then we went to a bar.

Q You made another stop?

A Yes.

Q You went to a bar?

A Right.

Q What did you do in the bar?

A They wanted to get some beer.

Q Did they say anything in the bar?

A Well, they just told me I better not do anything.

Q What did they mean by that?

A I better not say anything and I better stick close to them.

Q About how long were you in the bar?

A Maybe a half an hour.

Q Do you know where that bar is located?

A I think it is in Montrose.

Q How do you know that?

A Because the F.B.I. and I went back there.

Q Is that Montrose, Pennsylvania?

A Yes.

Q Tell me something, what time was all this happening, Miss Shepardson? Can you recall the time of day?

A It was late at night.

Q I see. Then when you left the bar, what happened next, you got back in the car?

A Yes.

Q And where did you go?

A And then they took Dave home.

Q You were with them at that time?

A Yes.

THE COURT: What time was it when you got in the car to start this ride?

THE WITNESS: It was possibly 10, 9:30.

THE COURT: At night?

THE WITNESS: Yes.

THE COURT: Was it dark?

THE WITNESS: Yes.

THE COURT: Was it cold?

THE WITNESS: Yes.

THE COURT: What kind of a car was it?

THE WITNESS: It was -- all I can remember is a green car. I can't remember the make.

BY MR. PAVONE:

Q What happened when you got to Dave Bair's apartment?

THE COURT: Just a minute. How long was it from the time you got in the car until the time you got back to Dave's apartment?

THE WITNESS: It seemed like we were gone forever.

THE COURT: Well, how long? You say you started out about 9 or 10 o'clock at night. What time did you get back to Dave's?

THE WITNESS: Maybe at -- in two or three hours.

BY MR. PAVONE:

Q So you returned sometime early in the morning the next day?

A No, no, it was still at night when we returned.

Q It was still dark?

A Right.

THE COURT: Well, was it after midnight?

THE WITNESS: I think so because Dick Finch was home and he gets out of work after midnight.

BY MR. PAVONE:

Q Now, what happened at Dave Bair's apartment? Did anybody say anything to you there?

A I just went up and used the bathroom and somebody handed me the phone, and that was it.

Q That was it. Then where did you go from there?

A They took me to Debbie's house.

Q "They" meaning Tony Cavallaro and Gerry Brown?

A Right.

Q They took you back to Debbie's house?

A Yes.

Q And did anybody escort you to the door at Debbie's

house?

A Yes.

Q Do you recall who that was?

A I can't remember which one it was.

Q It was one of them though?

A Right.

Q Was anybody home when you returned in Debbie's house?

A Yes.

Q Who was there?

A Dick Finch.

Q Did he open the door?

A Yes, he did.

Q Did the gentleman who escorted you to the door say anything to Dick Finch or yourself when you got in the house?

A I can't remember.

Q How about Dick Finch, did he say anything?

THE COURT: Who took you to the door? We have got people who all have names, so let's use them.

MR. PAVONE: Your Honor, she does not recall, I believe the witness stated, which one escorted her to the door.

BY MR. PAVONE:

Q When you went inside, did you say anything to Dick Finch?

A I told Dick what had happened and I said to him, you know, I said, I just asked him for another beer. I said, "I got to have another beer", and then I just passed out on the couch.

Q Can you recall your exact words to Dick Finch?

A No.

Q You passed out on the couch?

A Yes.

Q Tell me something, Miss Shepardson, during that entire car ride, were you free to leave the car at any time?

A No.

MR. SCELSI: I think that is for the jury to decide, Your Honor.

THE COURT: Sustained. Bring out the facts that lead you or her to that conclusion so the jury can draw it if the evidence supports it.

MR. PAVONE: Yes, sir.

Q Miss Shepardson, did you tell these gentlemen you didn't want to go on this car ride with them?

A No, I didn't.

Q Why not?

MR. SCELSI: Objection, Your Honor.

THE COURT: Overruled.

Q Why didn't you tell them that you didn't want to go to the car with them?

A I guess because they were ordering me to do as they said, and Debbie had told me earlier what had happened to Dave Bair.

Q Did you at any time tell these gentlemen that you wanted to stop the car ride and go home?

A No, I didn't.

Q Why not?

A I was too scared.

Q At any time during the car ride did you attempt to escape?

A No.

Q Again, why not?

A Because they told me I had 't better, and most of the time Gerry Brown was holding my hands behind the seat.

Q Now, when you got back to Dick Finch's apartment, did you call the police?

A No.

Q Why didn't you call the police?

A Because they told me I hadn't better do anything.

THE COURT: Where were you sitting

in the car?

THE WITNESS: In the beginning I was sitting in the front.

THE COURT: Who was with you in the front?

THE WITNESS: Tony Cavallaro.

THE COURT: Anyone else?

THE WITNESS: No.

THE COURT: Where was Brown?

THE WITNESS: He was sitting in the back of me.

THE COURT: And Dave was in back?

THE WITNESS: Right.

THE COURT: And only the four of you in the car?

THE WITNESS: That's right.

THE COURT: You said in the beginning. At some point did you change your position in the car?

THE WITNESS: Yes, when we came back, Gerry Brown put me in the back with him.

THE COURT: And where was Dave?

THE WITNESS: He was sitting in the front with Tony.

THE COURT: Was Tony driving?

THE WITNESS: Yes.

BY MR. PAVONE:

Q Now, Miss Shepardson, did you call the police as soon as you got back to Dick Finch's apartment?

THE COURT: Just one moment. You said Gerry was in the back seat. Was he directly behind you or behind the driver?

THE WITNESS: He was behind me.

THE COURT: And he was holding your hands, you said?

THE WITNESS: Yes.

THE COURT: How is that, can you show us? Pretend that is the seat, show us how.

THE WITNESS: He was just holding them back here with one of his hands, both of them.

THE COURT: Behind the seat?

THE WITNESS: In back of me, yes.

BY MR. PAVONE:

Q Now, Miss Shepardson, did you call the police when you got back to Dick Finch's apartment?

A No, I didn't.

Q Why didn't you do that?

A Because they told me not to, and I was just really scared when I got back. I just was so exhausted that I just went to sleep on the couch.

Q Now, after you went to sleep on the couch, were you awakened?

A Yes.

Q Do you recall about what time that was?

A It was early in the morning sometime.

Q And who had awakened you?

A A policeman came in with a flashlight.

Q And the policeman inquired about the events of that night?

A Yes.

Q Now, Miss Shepardson, I would like to ask you to take a look around the Courtroom, and take your time, please, and I would like to ask you if you can identify the man you later learned was Gerry Brown.

THE COURT: Stand up so you can see.

Q Yes, please.

A (Witness shaking head negatively).

Q You can't see him?

A I'm not sure if it's him or not.

Q Do you see somebody you recognize?

A The gentleman in the black suit looks familiar but he was heavier. I don't know.

Q Which gentleman in the black suit are you referring to?

A The one on the end, but I am not sure because this guy was bigger.

Q I see.

THE COURT: Would you stand up, please, Mr. Brown?

A That's him.

MR. PAVONE: I have no further questions.

MR. SCELSI: May I approach the bench?

THE COURT: Yes.

(The following was an on-the-record discussion at the bench).

MR. SCELSI: I just received this statement this morning.

THE COURT: Did you finish your direct?

MR. PAVONE: Yes.

THE COURT: How long do you think you will be?

MR. SCELSI: I would like at least a half an hour to look it over.

THE COURT: How many are there?

MR. PAVONE: There were two statements, Your Honor.

THE COURT: How extensive are they?

MR. PAVONE: I will show you.

THE COURT: Why didn't you ask for this the other day?

MR. SCELSI: I did. He said he would give it to us Tuesday. He said we could have them Tuesday and they didn't give them to us. So I don't want to be disrespectful, but I expected them Tuesday morning.

(Proceedings continue in open Court).

THE COURT: We have hit a snag here. Defense Counsel have a right to read certain material, earlier statements of this witness. It is rather extensive, and I know that about half of you spent the night here with me until about midnight last night, that you are tired. So we will adjourn now until Monday morning at 10 o'clock. Don't talk about the case, don't let anybody talk about it with you.

(Jury leaves Courtroom).

THE COURT: I want the record to reflect that the witness had indicated Mr. Brown before he stood up as the gentleman in the black suit on the end. He was the gentleman in the dark

blue suit on the end. All right.

MR. SCELSI: She also indicated, didn't she, previously, the gentleman in the yellow shirt?

THE COURT: Her first identification was one of the lawyers, a young man in the yellow shirt who is not totally dissimilar, if I might add, from my own observation, generally the same height, build, hair color and so on.

THE CLERK: Court stands in recess until 10 a.m. Monday morning.

CERTIFICATION

I, George T. McGloine, Official Court Reporter for The United States District Court in and for The Northern District of New York, do certify this to be a true and accurate transcript of the stenographic record of the foregoing taken at the time and place noted in the heading hereof.

George T. McGloine
Official Court Reporter
United States District Court
Northern District of New York

Albany, New York

December 4, 1976

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against - 76-CR-13

ANTHONY L. CAVALLARO and
GERALD J. BROWN,

Defendants.

Continuation of Proceedings in the above-entitled matter, July 12, 1976, Federal Building, Auburn, New York, before the Honorable Lloyd F. MacMahon, United States District Judge, sitting by designation.

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A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, JR., United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, By: JOSEPH PAVONE, Assistant United States Attorney, of Counsel.

JOEL A. SCELSI, ESQ., P. O. Box 479, 2609 E. Main Street, Endicott, New York, 13760, Counsel for Defendant Cavallaro.

STUART E. FINER, ESQ., Greenwyn Building, 4 Hobart Street, Utica, New York, 13501, Counsel for Defendant Brown.

THE COURT: Gentlemen, proceed.

(Whereupon, the following proceedings took place in the courtroom, out of the presence of the jury.)

MR. SCELSI: Your Honor, this subpoena was served for the records of the Broome County Social Services, and the Commissioner of Welfare is here with his attorney.

However, they have refused to permit me to see these certain records concerning Mary Shepherdson. I subpoenaed them for 9:30, and they got here a little after 10. I can understand why they were late, with the weather, but they have refused me access to them, and I will submit to the Court that it is important to the defense to see these records.

THE COURT: I have no question about that. Let me see what they have to say. Who is here?

MR. THOMAS B. OAKES: Your Honor, I am Thomas B. Oakes, attorney for the Welfare Commissioner.

THE COURT: I will be happy to hear what you have to say. I suppose, under

state law these are privileged, is that it?

MR. OAKES: Yes, sir. Many of them are under the federal statute, also.

THE COURT: Well, that privilege, at least, must yield to the point where the Court can inspect them in camera, and since you have the reports here, please turn them over to the Court. I direct you to do so.

MR. OAKES: Yes, sir, the reports are present.

THE COURT: I direct you to turn them over to me for inspection in camera, and I will mark any that are available and that are material and relevant to this case.

MR. OAKES: Shall I submit some writing for the Court?

THE COURT: No, you don't need to. The court reporter is right here, and he is writing this up.

MR. OAKES: May I make a statement?

THE COURT: Sure.

MR. OAKES: On behalf of the Broome County Social Services Commissioner, I do object to the disclosure of the records

in this case. My authority is Title 42, Section 602(a) of the United States Code.

It refers to the fact that public assistance records for the ADC, which is Aid to Dependent Children, that category says that the state plans in that program must provide safeguards which restrict the use or disclosure of information concerning applicants or recipients for purposes directly concerned with the administration of aid to families with dependent children. And consistently with that, Social Services Law, Section 136 of the New York State statute states that information in the public assistance records of the Commissioner of Social Services shall be disclosed only by authority of the Commissioner of Social Services, or his authorized representative, the County Board of Supervisors, City Council, Town Board or other board or body authorized and required to appropriate funds, and by authority of the county, city or town Social Services official, to a person or agency considered entitled to such information.

And the state regulations, which

is Regulation 357 of the State's Social Services regulations, and that is Title 18 of the state regulations, provides that for a prohibition against disclosure of information in the public assistance records, it says that officers and employees of public welfare agencies shall not reveal information obtained in the course of administering public assistance for purposes other than those directly connected with the administration of public welfare.

And then the resolution tells us what to do if we get a subpoena from the Court.

In that same regulation, at 357.3, down in Subparagraph F it says that in the event that a subpoena from a court is for a purpose not directly related to the administration of public assistance or the protection of a child, the agency shall plead, and the local department, in support of its request to withhold information, and that is the Social Security Act, the Social Welfare Law, and the regulations from the State Department of Social Welfare prohibit disclosure of confidential information contained in records

applicable, including the names of the client.

It does say that an agency shall be governed by the final order that the Court may make. That is on public assistance records.

I think that the Court is aware of the basis of the interest in the client, and to save from embarrassment and danger, and for the protection of any contents of confidential sources by disclosing the records.

Further, there is Section 372 in the State Social Services Law, which pertains to child welfare records, and in that section which I submit is the exclusive procedure for obtaining disclosure of child welfare records, and a setting forth of the limited exclusive limited category of persons who are entitled to obtain those records, and it says that upon application by a parent, relative or legal guardian of a child, or by an authorized agency, and the law on that statutes means the local Welfare Department, an adoption agency and like that for Family Court, and after due notice to the institution where authorization to the effect that the Supreme Court of the State of New York may, by order,

direct the authorization to furnish the information.

So this is just for this limited class of person in this limited proceeding.

This is such a disclosure of child welfare records that are available, and I would submit that these provisions govern as to the kind of records which are subpoenaed in this case.

THE COURT: Thank you very much. I am familiar with all of this, and I have been over the course many times and in the various regulations in the statutes, themselves.

It is implicitly recognized that the privilege must yield in the discretion of the Court, and in criminal cases, and at least to the point where the Court must inspect them in camera to the end that there will be no denial of due process or suppression of evidence.

I have but to cite some recent Watergate problems and cases involving our late President, and as authority for that proposition, so none of these privileges are

absolute.

I direct you to make available all of the records that were subpoenaed, available to the Court for an in camera inspection. Of course, we will return them to you as soon as they have served our purpose.

Thank you very much.

MR. OAKES: Thank you, your Honor. Mr. Dimitri is present, because the subpoena was addressed to him. Need he stay?

THE COURT: No, he need not stay. I assume that you will stipulate that these are records kept in the regular course of business, and if any of them have to be involved, we do not need a witness to testify?

MR. PAVONE: I will stipulate to that subject too, and object as to the relevancy.

THE COURT: Do you have any objection, other than relevancy or immateriality, as to records kept in the regular course of business?

MR. PAVONE: I will stipulate to that, your Honor.

THE COURT: Do you need him for

MR. SCELSI: I don't think that we would need him, as long as there is no question.

THE COURT: They are competent?

MR. SCELSI: Sure. The only other situation we have is that of being denied the right to see them, and I did want to look at them prior to my cross-examination of them before --

THE COURT: (Interrupting) Well, I will take the time to do it now. I will go over them. I understand that you might need them before cross-examination?

MR. SCELSI: Yes.

THE COURT: I will take the time to go over them now. We will tell the jury we have some legal problems here.

THE CLERK: Court stands in recess.

(Whereupon, Court stood in recess from 10:20 a.m. until 11:20 a.m.)

THE COURT: Let the record reflect that the Court has, for more than hour, been reading the in camera file which was subpoenaed. It is about an inch and a half

thick, and I find nothing of any significance at this time, or any materiality except two newspaper clippings which I suppose that you already have, and I suppose are matters of public knowledge, but you can look at them if you wish.

(Counsel examined two clippings offered by the Court.)

THE COURT: Let the record reflect that I have shown the two clippings to counsel. Let's proceed.

MR. SCELSI: We are obviously not concerned with newspaper clippings, but counsel finds that we will have to proceed -- well, unless the matter develops later that it may be of essence to us --

THE COURT: (Interrupting) We can't hear you.

MR. SCELSI: Unless it develops later that there is something important there, after our cross-examination, and I would submit and ask the Court to review his determination.

THE COURT: As I said, I find nothing of any immateriality at this time.

MR. SCELSI: Thank you.

THE COURT: All right, proceed.

(Whereupon, the following proceedings were held before the Court and the jury.)

THE COURT: Good morning. I am sorry that you have been delayed but we have had matters that required my attention, and not yours, and I thought that you could rest while I was working.

Gentlemen, proceed.

M A R Y S H E P H E R D S O N,

having been previously sworn, was examined and testified further as follows:

CROSS-EXAMINATION

BY MR. SCELSI:

Q Mrs. Shepherdson, you have testified here last Friday -- well, I have never spoken to you and talked to you before today, have I?

A No.

Q And you haven't been in the area of the Triple Cities, that is Binghamton, for some period of time, isn't that correct?

MR. PAVONE: Well, your Honor --

THE COURT: (Interrupting)

Sustained. Please be quicker with your objections, Mr. Pavone, and voice them, rather than just standing up. The record doesn't indicate that the prosecutor stood up.

MR. PAVONE: Yes, your Honor. I beg your pardon.

BY MR. SCELSI:

Q You first became acquainted or talked with the FBI about this situation sometime around the 15th of December, is that correct?

A Around there, yes.

Q And previous to that you had talked to some local police authorities, isn't that correct?

A Yes.

Q And you talked to the Sheriff's office?

A Yes.

Q And from Tioga County and Broome County?

A Yes.

Q Correct?

A Right.

Q And then there came a time when the FBI took over, isn't that right?

A Right.

Q And they told you that you had been kidnapped, isn't that right?

MR. PAVONE: Objection.

THE COURT: Sustained.

BY MR. SCELSI:

Q Well, were you aware of the information that was signed by an FBI agent against the defendant Cavallaro in December, or December 17th of 1970?

MR. PAVONE: Objection.

THE COURT: Overruled. Except, I will sustain an objection to the form. Were you aware?

BY MR. SCELSI:

Q Were you aware of that?

A Yes.

Q And you did not sign any information against Mr. Cavallaro at that time, did you?

A At this time?

Q Yes.

A I don't understand.

THE COURT: She doesn't understand.

BY MR. SCELSI:

Q You don't understand? Were you aware that Mr. Cavallaro was arrested by the -- well, FBI Agent Horst on December 17th, 1970?

MR. PAVONE: Objection.

THE COURT: Overruled.

THE WITNESS: I found that out later, yes.

BY MR. SCELSI:

Q And were you aware of the fact that the defendant demanded a preliminary examination --

THE COURT: (Interrupting) Sustained. It has no --

MR. SCELSI: (Interrupting) Well, your Honor, I am leading up to the reason for this.

THE COURT: Well, put a leading question. This is cross-examination. Put a leading question, and then I can tell whether it is relevant or it isn't.

BY MR. SCELSI:

Q Were you aware of the fact that after the information was signed by Mr. Worst and the defendant asked for a preliminary examination, that the charges were dropped?

A No.

Q You never testified at a preliminary examination, did you?

A Testified?

Q At a preliminary examination where the defendant,

Cavallaro, was present, did you?

A I know I went to a -- I testified before this.

Q You testified in Albany, or Syracuse, isn't that correct?

A Right.

MR. SCELSI: I want you all to know that I am just trying to talk loud, and not shouting at her.

THE COURT: Everybody understands that. The acoustics are bad, and don't worry about that.

BY MR. SCELSI:

Q Now, let's go back to before I talked to you about your testimony last week, and I want to ask you a little about some of the people involved in this situation. If you only testified for about a half hour --

THE COURT: (Interrupting) Put your question.

BY MR. SCELSI:

Q Let me ask you this: There was some discussion Friday that you didn't know what Mr. Cavallaro was talking about when you were in that car that night, isn't that correct?

THE COURT: Sustained.

BY MR. SCELSI:

Q How long had you known Jerry Brooks?

A Not long at all. A real short time.

Q Pardon me?

A A really short time.

Q Two or three weeks?

A I don't think it was even that long.

Q And where did you meet Mr. Brooks?

A When I was living with Dick Sampson.

Q Pardon me?

A When I was living with Dick Sampson.

Q And that was on the second floor of 5 Canyon Street in Johnson City?

A Right.

Q And Mr. Brooks and this other fellow, what was his name, that came to talk, and you were introduced to?

A He brought somebody with him. I guess it was LaMont.

Q LaMont?

A They were there for like two seconds and left.

Q Is that all you know about these gentlemen?

A That is all.

Q And were there two black gentlemen from Syracuse?

A Mm-hmm.

Q And you don't know anything else about them, right?

A No, I didn't.

Q What about the meeting that you had with Mr. Brooks and Mr. Baer at Mr. Baer's home on the night of December 5th, and do you recall that?

A Yes.

Q And did you have some contact with Mr. Brooks, isn't that correct?

A Well, Mr. Brooks came over to Dick's house, and Dick wasn't there, and he wanted to go over and see Jim.

Q Jim who?

A Jim Baer. We were going to do some singing together.

Q Pardon?

A I wanted to go over and do some singing with him, and I had Jerry take me over.

Q And you went with Mr. Brooks and Mr. LaMont?

A No.

Q And Mr. LaMont didn't go along but you went to Mr. Baer's house, isn't that correct?

A Right.

Q And that was maybe three or four miles away?

A Right.

Q At the other end of town. And you had a conversation with Mr. Baer and Mr. Brooks about some

sale of marijuana, didn't you?

A No, I didn't.

Q You didn't?

A No, I was upstairs singing with Jim. I didn't talk about marijuana at all.

Q Were you smoking marijuana that night?

A Maybe just a little bit, upstairs.

Q You had smoked marijuana on a number of occasions, hadn't you?

A Once in awhile, yes.

Q And did Mr. Brooks give you some cocaine?

A No.

Q And did you ever use it?

A I used it once.

Q More than once?

A No.

Q So you did go down, then, to Endicott, and that was in Endicott, New York, where Mr. Baer lives?

A Right.

Q And this was on December 5th of 1976?

A I don't know the date.

Q But you deny having any conversation about selling any marijuana to anybody?

A That's right, because I didn't.

Q Were you on welfare at this particular time?

A I wasn't on welfare, no.

Q Pardon?

A No.

THE COURT: At what time?

MR. SCELSI: At this particular time.

THE COURT: What time?

MR. SCELSI: December 5th, 1976.

THE COURT: I don't know what you are talking about.

MR. PAVONE: I think that Mr. Scelsi means 1975, and not 1976.

MR. SCELSI: I am sorry. I am referring to 1975.

THE COURT: Now, put your question in a time frame. Were you on welfare in December of 1975?

THE WITNESS: No, I wasn't.

BY MR. SCELSI:

Q You had been on and off welfare for a period of time, isn't that correct?

A That is correct.

MR. PAVONE: I object to the questions regarding the welfare. I don't see any relevance for this proceeding.

THE COURT: Sustained, but you are a little tardy. Wake up.

BY MR. SCELSI:

Q Let me ask you this: Did you ever have any problems with welfare, because --

MR. PAVONE: Objection.

THE COURT: Sustained.

BY MR. SCELSI:

Q Now, I believe that you stated you are presently divorced?

A That's right.

Q When did you get divorced?

A On May 3rd, 1975.

Q Now, prior to that you say that you were living with Mr. Sampson, on December 5th, 1975, is that correct?

A That is correct.

Q And how long had you been living with him?

A Maybe a month.

Q And before that were you living with Mr. Baer?

A Yes.

Q So this is the gentleman to whose house you went to, supposedly to sing, isn't that correct?

A It is correct.

Q And Mr. Brooks drove you down?

A Right.

Q And where was Mr. Sampson at this particular time?

A He was out working.

Q And isn't it true that on Friday the 5th he left for Cleveland?

A He left for Cleveland?

Q To visit his mother?

A No, he didn't leave me there alone.

Q All right. Are you telling us that you didn't know that Mr. Sampson left on Friday, December 5th, to go visit his mother in Cleveland for the weekend?

A December the 5th?

A I don't know. That could have been when I was in my own trailer.

Q As a matter of fact, Mr. Sampson asked you to leave the house, isn't that correct, and get your own place to live?

A He didn't ask me to leave. I left on my own.

Q So actually you were only living in the trailer from what date? What date did you move in?

A I don't know. I don't keep track of dates.

Q Well, you don't keep track of dates?

A No, I don't.

Q They are not important?

MR. PAVONE: Objection.

THE COURT: Sustained.

BY MR. SCELSI:

Q And at the time that you were living with Mr. Sampson, when you moved in with him, you didn't have your child, isn't that correct?

A That is correct.

THE COURT: I don't see the relevancy or materiality of this, and unless we get something relevant or material we are going to terminate your cross-examination.

BY MR. SCELSI:

Q All right. Now, let's get back to your testimony, then, of Last Friday. You say that you were subpoenaed to come here?

A To come here?

Q Yes.

A Yes.

Q Did you have -- you didn't want to testify --

THE COURT: (Interrupting) Sustained.

BY MR. SCELSI:

Q Now, on the morning of December 10th, you had been living in your trailer, right?

A Right.

Q For approximately three or four days, is that correct?

A About three or four days.

Q And did Jerry Brooks spend any time with you overnight at that trailer?

MR. PAVONE: Objection, your [illegible].

THE COURT: Sustained.

MR. SCELSI: I may submit --

THE COURT: (Interrupting) Sustained. Next question.

BY MR. SCELSI:

Q And about what time did you get over to Debbie Buchanan's apartment?

A I left my trailer about -- it was in the morning about 10 or 10:30.

Q And you testified -- you stated that you went over there with your child, is that correct?

A That is correct.

Q How did you get there?

A I walked.

Q And you had gone to see Debbie to have her baby sit for your child on that particular date?

A Not in the beginning. Debbie and I were talking, and she said to go down and talk to Welfare about

fuel, and then I had her baby sit.

Q What time did you start hitchhiking up to Binghamton?

A It was maybe about 11 in the morning or so. After I got there a short while.

Q Do you recall talking to the Sheriff's Department, Officer Avery, and Harvey Milks, isn't that correct?

A Correct.

Q And you talked to them on two occasions on the 11th of December, 1975?

A Yes.

Q And again on the 15th of December?

A I don't know the date, but I know that I talked to them again.

Q And you were asked that question, and you said then it was around 3 o'clock that you started hitchhiking to Binghamton?

A Three o'clock? Ten o'clock? I don't know.

Q Well, if I told you that you stated that you, on December 11th, and on December 15th, that you started hitchhiking at three o'clock, would your memory have been better then, then it is now?

A Probably, I don't know. Like I said, I don't keep time nor dates.

Q Now, you were not living in the trailer at 5 Hampton Street on the night of Sunday, December 7th, were you? You were in your trailer, isn't that correct?

A That is correct.

Q And do you recall Mr. Sampson coming over to talk to you?

A Yes. He was trying to get me to go back with him.

Q Pardon?

A He was trying to get me to go back with him and come back and live with him and I told him I couldn't.

Q And isn't it true at this time that there was a discussion about the sale of marijuana to Brooks, and you were involved in it?

A No.

THE COURT: Come on up to the bench.

(Whereupon, the following took place, out of the hearing of the jury.)

THE COURT: I want an offer of proof. So what? So she discussed this marijuana, and she discussed the sale of marijuana. So what?

MR. SCELSI: This whole event was

one event, your Honor.

THE COURT: You mean people have a right to kidnap somebody because they were in the drug field?

MR. SCELSI: If she is going to lie on the stand -- I have witnesses who will testify that they had this conversation.

THE COURT: I don't see any relevancy or any materiality. You are not charged with drugs, but kidnapping.

MR. SCELSI: That is true, but she was involved in this entire situation from the beginning.

THE COURT: So what?

MR. FINER: She denies knowledge of this.

THE COURT: Of what?

MR. FINER: Any drugs or anything else.

MR. SCELSI: On the stand she denied everything.

THE COURT: Put some direct questions to her and see what she says. Cross examine her.

(Whereupon, the following took

place before the Court and jury.)

BY MR. SCELSI:

Q Last Friday when you testified you stated that when you were in the car with Mr. Cavallaro, you didn't know what he was talking about, about any rip-off, is that correct?

A I told him I didn't know about it.

Q And you are denying that you had any conversation with Mr. Sampson two days previously, or three days previously, on December 7th, relative to a drug --

THE COURT: (Interrupting) Wait a minute. She said she told your client she didn't know anything about it. What are you trying to do? Are you trying to prove that that was a lie? What she told your client, or that she is lying on the stand? There is a difference, Mr. Scelsi. That is the very point that I just finished talking to you about.

BY MR. SCELSI:

Q Let me ask you this: Did you have a conversation with Sampson, yes or no, on the night of December 7th, about this drug situation?

A No.

Q All right, thank you. Now, getting back to the -- you say time doesn't mean anything to you, but a certain time on December --

MR. PAVONE: (Interrupting) Objection.

THE COURT: Sustained. Put your question.

BY MR. SCELSI:

Q On a certain time you started hitchhiking to Binghamton?

A That is right.

Q And did you get to the Welfare office?

A Yes.

Q And what happened?

A I went in the Welfare office, and they gave me papers to fill out, and take them home.

Q You had been there before, hadn't you?

A Right.

THE COURT: I am sorry. I did not hear the answer.

THE WITNESS: Yes.

BY MR. SCELSI:

Q And when you were at the Welfare office, on the way up you rode up with a fellow by the name of Uslip, is that right?

A Yes, sir.

Q And he needed money for gas, isn't that correct?

A Yes.

Q And did you give him the money for gas?

A I gave him $2 for gas.

Q You testified last Friday that you didn't have any money on that particular date, isn't that correct?

A I had a couple of dollars, but not enough to get gas for the trailer.

Q Prior to riding to Binghamton with this person by the name of Ulip, were you hitchhiking, and picked up by a Thunderbird, is that correct?

A That is correct.

Q And that is the same car that you went in later that night?

A Yes.

Q And when you got in it -- you didn't know who was driving the car until you got in it, did you?

A No.

Q And when you got in, Mr. Cavallaro was there, isn't that correct?

A Yes.

Q And then what if you do prior to going to Binghamton?

A Going to Binghamton?

Q Prior to going to Binghamton? Didn't you stop and have a conversation with Mr. Cavallaro at McDonald's, which was across the street from your apartment?

A We didn't have a conversation.

Q Did you have a conversation about seeing him later that evening?

A No.

Q And did you have any conversation about this Jerry Brooks?

A No. We came back and we -- from there they took off. They dropped me off and left.

Q They didn't talk to you anything about Jerry Brooks or where he lived, or anything?

A No.

Q Now, they picked you up on this particular afternoon, and there wasn't anybody else around, isn't that correct? They picked you up on the street?

A Right.

Q And to your knowledge no one saw you get in the car, isn't that correct?

A That is correct.

Q And they went around the block, and then dropped you off, and you went to Binghamton?

A Right.

Q And did you ask Mr. Cavallaro for some money?

A No.

Q And did he give you $40?

A No.

Q Now, you stated on examination yesterday -- I mean Friday -- that you didn't know Mrs. Cavallaro too well, isn't that correct?

A Right.

Q And isn't it a matter of fact that she used to baby sit for you?

A Right.

Q On occasions?

A Right.

Q When you were going with Mr. Baer?

A Right.

Q And so you got to know her fairly well, isn't that correct?

A Pretty good, I guess. I didn't know her that well.

Q But you were up to her house on a number of occasions, weren't you?

A Yes.

Q And you knew her well enough to entrust her to care for your baby, didn't you?

A Yes, sir.

Q And you got to know her?

A Yes.

Q And you knew Mr. Cavallaro for over two years, isn't that correct?

A I don't think it was over two years. I don't think it was two years.

THE COURT: About how long was it?

THE WITNESS: Maybe a year.

BY MR. SCELSI:

Q And you would leave the baby at Cavallaro's while you would go out with Mr. Baer, isn't that correct?

A Right.

Q And you would go to carnivals and different other things?

A Right.

Q Now, there came a time, then, that you came back to Johnson City, is that correct?

A Right.

Q And if your statement is correct -- well, let me ask you this for the benefit of the jury: You had to go to Binghamton, which is approximately how far from Camden Street, where you were? Was it five or six miles?

A Maybe five or six miles.

Q And did you go straight up Main Street to get to Binghamton?

A We went, and we got in another car.

Q How did you get to Binghamton?

A How?

Q Well, let me ask you this: How long were you gone before you came back? An hour or an hour and a half?

THE COURT: What are we talking about? The welfare visit, or what?

MR. SCELSI: Yes.

BY MR. SCELSI:

Q According to the statement that you gave Mr. Milks the day of all of these incidents on December 11th, you were gone -- at three o'clock you started hitchhiking on your way to Binghamton, isn't that correct?

A Yes.

Q And all I am asking you now is how long were you gone?

A Approximately an hour or an hour and a half.

Q All right. And when you got back, did you talk to Mr. Cavallaro at that time?

A They just said -- they just dropped me off, and

they took off.

Q So you did talk to Mr. Cavallaro when you got back also, isn't that correct?

THE COURT: Did Cavallaro bring you back from the Welfare office?

THE WITNESS: No.

THE COURT: Well, was he -- where did you go when you came back from the Welfare office?

THE WITNESS: I came back and then Dick, Finch, and I went down to see my boss.

THE COURT: Who brought you back from the Welfare office?

THE WITNESS: "Worthless" or "Useless."

THE COURT: "Useless" brought you back?

THE WITNESS: Right.

THE COURT: And where did you go when you came back?

THE WITNESS: I came back to Debbie's house.

THE COURT: And who did you see when you got to Debbie's house? Did you see

Cavallaro?

THE WITNESS: I can't remember -- I don't think Cavallaro was there.

THE COURT All right. Next question.

BY MR. SCELSI:

Q You can't remember, is that right?

A That's right.

Q Could you have talked to him when you got back, if you can remember?

A I can't remember. I know that we were trying to get something -- no way. I know that Dick took me to get fuel right after I got back, because I couldn't get any welfare money.

Q So at 4:30 then you are telling us that Mr. Finch -- I believe it is Fitch -- Mr. Fitch took you down to your place of employment, is that correct?

A That is correct.

Q And then from there did you come right back?

A No, we went to look for fuel.

Q And about 6 o'clock you called Jerry Brooks, didn't you?

A No, I didn't call Jerry.

Q Are you sure of that?

A Yes.

Q He was in Syracuse at the time, wasn't he?

A I guess so.

MR. PAVONE: Objection. She said that she didn't know, and didn't talk to him.

THE COURT: Do you know whether he was in Syracuse? That is the question.

BY MR. SCELSI:

Q Do you know whether he was in Syracuse?

A Yes.

Q He was, wasn't he?

A Yes, because Dick told me that is where he lived.

Q And you knew how to get a hold of him, didn't you?

A. I had no idea of how to get a hold of Jerry.

Q And then you went out and got some groceries?

A Right.

Q And let's fix a time for that. Was that around five o'clock?

A I think it was a little later, because it was dark when I came back.

Q Do you recall where you went?

A I went down to the shopping center.

Q Now, you got back and I am not too clear as to when Debbie got a phone call from Mr. Baer. You were there when she got the call?

A No.

Q Are you sure of that?

A I am positive.

Q And when you went in she mentioned the telephone call from Mr. Baer, isn't that correct?

A Correct.

Q And isn't it correct that she told you that Mr. Baer was going to come with Mr. Cavallaro, and another gentlemen, to see you?

A They just told -- she told me that they were coming down.

Q To see you and talk to you, right?

A Yes.

Q And they were interested in getting an address, right?

A Right.

Q And didn't she also tell you that you might go for a ride with them to discuss the situation further?

A No, she didn't.

Q Are you sure of that?

A Positive.

Q And in any event you stated that, isn't that correct?

A Yes.

Q And you were there anywheres from a half hour more

before a gentleman came into your apartment, isn't that correct, where you were?

A I don't know how long I was there.

Q You didn't leave, did you?

A She told me not to, so I didn't.

Q Debbie told you not to?

A Right.

Q And you didn't receive a call, yourself, from anyone in telling you not to leave, did you?

A No.

Q At approximately 10 o'clock that night, or so, according to your testimony, the fellow did come into the apartment, isn't that correct?

A Yes.

Q And it would be -- was he the same fellow that you saw that afternoon that you thought maybe was a car salesman?

A Right.

Q And you knew then that he was with Mr. Cavallaro?

A I didn't know that he was with Mr. Cavallaro, no.

Q Now, actually you were in the kitchen, when the man came to the door, isn't that correct?

A Yes.

Q And did you hear him say anything?

A He just asked where I was.

Q Asked where was Mary, right?
A Yes.
Q Because you were out of view of the front door, isn't that correct?
A Right.
Q Now, when he came out, the two of you or actually the three of you engaged in a conversation, isn't that correct?
A He just said that Dave wanted me, you know, wanted to talk to me.
Q And Dave was in the car, isn't that right?
A Yes.
Q And your baby was on the floor, at that time?
A He was in the crib.
Q In the crib. And you talked about your son at that time, also, didn't you?
A He said what a cute son he was; what a cute kid.
Q And you talked about the names, right?
A He asked what his name was, and I said, "Jason."
Q And then he told you that his son had the same name, isn't that correct?
A Yes.
Q So you were there more than a minute or two, and you were there and engaged in a conversation about children, isn't that correct?

A Yes, for a couple of minutes.

Q And he showed you a tattoo on his arm with the name Jason?

A No, he didn't.

Q And you got your coat, and there was a time that you left with him to get in the car, right?

A Right.

Q And when you walked out, you got to the -- the car was parked right outside, isn't that correct?

A Yes.

Q And isn't it true that right out in front of the house was a street light?

A Mm-hmm.

Q And it was setting right under the street light in plain view of anyone in the house, or anyone walking down the street, isn't that correct?

A Yes.

Q And right across the street was the McDonald's parking lot which was completely lit up, also, isn't that correct?

A I don't know. I didn't pay any attention to whether it was lit up or not.

Q There was a McDonald's parking lot across the street?

A Yes.

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Q Now, when you got in the car, you knew that you were going for a ride, isn't that correct?

A Well, they told me I was going to go for a ride.

Q As a matter of fact, you knew it before or reiterated in the afternoon that they were going to come back and talk to you that night, isn't that correct?

A No.

Q Well, you knew that they were coming for half an hour or more, didn't you?

A Yes.

Q Now, when you got back that particular evening it was around 1:30, is that correct?

A I don't know what time it was. I know that Dick Fitch was home from work.

Q Pardon?

A Dick Fitch got home around that time from work, and he was home.

Q And I believe that you testified that you had another glass of beer? You wanted a beer?

A Yes.

Q And then you went to sleep, didn't you?

A Yes

Q And you didn't call the police, did you?

A No.

Q And Mr. Fitch didn't call the police, did he?
A No.
Q And Mr. Sampson was upstairs at that particular time, isn't that correct?
A I don't know. I don't know.
Q You don't know?
A I don't know that he was upstairs.
Q And during this ride into Pennsylvania, and incidentally, Pennsylvania is about five miles from where you were?
A I don't know the mileage to it.

THE COURT: From where you were?

BY MR. SCELSI:

Q From 5 Camden Street, in Johnson City, and isn't it true that to get to Pennsylvania you go down Route 26 approximately a mile west, and then straight south into Pennsylvania?

THE COURT: I will take judicial notice that it is about five miles.

MR. SCELSI: Thank you.

THE COURT: From Endicott.

BY MR. SCELSI:

Q And while you were in Pennsylvania you were at Red Park, isn't that correct?
A Yes.

Q And you were ther about how long, again?

A Maybe an hour.

Q Or an hour and a half?

A An hour and a half.

Q And you had drinks there?

A Yes.

Q And you talked further about this situation, isn't that correct?

A Yes.

Q And isn't it true that Mr. Cavallaro and Mr. Brown -- withdraw that. I will rephrase that question.

Now, you were in the bar for an hour or an hour and a half, isn't that correct?

A Yes, that is correct.

Q And there were a number of people in the bar, five or six other people, isn't that right?

A Yes.

Q Sure, and you didn't talk to any of them?

A No.

Q Well, Mr. Pavone concluded by asking you a number of questions and actually, with respect to this ride, the ride itself, you weren't mistreated in the car, were you?

A Not physically, no. It was just my hands were held.

Q And this is on the way back, isn't that correct?

A No, on the way up.

Q And isn't it true that in front of the Grand Jury you testified that you were turned around talking to Mr. Brown, when you got in the car, is that correct?

A That is correct.

Q And what kind of a -- you were in the front seat?

A Mm-hmm.

Q And you were turned around looking to your rear talking to Mr. Brown, about the situation, correct?

A Yes.

Q And back to approximately 6 or 7 p.m., when Debbie told you that she had a phone call and you did not have to stay and you could have left, isn't that correct?

A I would --

Q (Interrupting) Just answer the question yes or no.

THE COURT: It is not very clear. Make your question clear, and I will allow her to answer.

BY MR. SCELSI:

Q When you got back, presumably from grocery shopping, and you walked into the house and Debbie

said that you had a phone call, she told you to stay, isn't that correct? That is what you are telling us?

A Right.

Q But you could have left, isn't that correct?

A Yes.

Q But you stayed because you knew that Mr. -- that you were to see Mr. Cavallaro and talk to him, again, later on, is that correct?

A They said that they were just coming over

Q And they told you in the afternoon that they were going to see you again at night, isn't that correct?

A I don't remember that.

Q Could they have told you?

A I don't remember.

Q Isn't it true that after talking to all of the -- to the various police agencies from Binghamton, and in Tioga County, you talked to the Federal Bureau of Investigation?

A Yes.

Q And they insisted that you push through with the situation?

MR. PAVONE: Objection.

THE COURT: Sustained.

Now, look, did they insist that you push through?

THE WITNESS: No.

BY MR. SCELSI:

Q No? You have been getting some support from the government since then, haven't you?

A A little, yes.

Q And they made it a situation that in spite of your past you could now have your child, didn't they?

THE COURT: I couldn't hear it.

BY MR. SCELSI:

Q They set up the child so that you could get your child back?

A I had it before that.

Q Mr. Sampson got it for you, isn't that correct?

A We got it back together, yes.

Q And you went and told the Welfare Department that you were going to marry Mr. Sampson, isn't that correct?

A That is correct.

Q And based upon this they gave you back your child, isn't that correct?

A Yes.

Q But then you moved out on him, and didn't marry

him, isn't that right?

A Yes.

MR. SCLESI: That is all.

THE COURT: Mr. Finer?

BY MR. FINER:

Q Miss Shepherdson, last Friday you testified that there was a gentleman came to see you on December 10th at around 10 o'clock, who you said sometime later that you identified him as Jerry Brown, is that correct?

A Yes.

Q And at the time when he came to the apartment, did he physically harm you at all?

A No.

Q And did he threaten you in any way at that time?

A No.

Q You recall the weather conditions at that time? Was it cold out?

A Yes, it was.

Q And this gentleman also asked you, or suggested to you, that you get your coat?

A Yes, he told me it was cold out.

Q And you got your coat?

A Right.

Q And then after that, did he escort you outside?

A Yes he did.

Q And he opened the door for you?

A Yes he told me to get in that we were going to go for a ride.

Q I am sorry?

A He told me to get in that we were going for a ride.

Q At the door to the apartment, did he open the door for you to get out of the apartment?

A I don't remember if he opened it or I did.

Q And when you got to the car he escorted you to the car?

A Yes.

Q And he opened the door for you?

A Yes.

Q And sometime later in your testimony last Friday you talked about an incident at the place called the Red Bar, was it, in Pennsylvania?

A Right.

Q And you sat down and you had a few drinks and would you describe Mr. Brown -- or would you describe Mr. Brown's demeanor toward you at that time?

A Pardon?

Q Would you say Mr. Brown was friendly to you at

that time?

A Well he told me that he was going to stick to me like glue, and I hadn't better try anything, and he was going to be, you know, right there with me.

Q Did he buy a drink for you?

A Everything -- yes.

Q He bought drinks for everybody?

A Yes.

Q Then on the way back from the bar you came back to New York State, is that correct?

A Right.

Q And they stopped somewheres so that you could go to the bathroom, isn't that correct?

A They stopped by David Baer's house; at his house.

Q And at that time did you go to the bathroom is that correct?

A Yes.

Q During the transaction, were you close, physically, or standing or sitting close to Mr. Brown at any time?

THE COURT: What transaction?

BY MR. FINER:

Q During the ride from the apartment to the bar and back again to the apartment -- they picked

you up and dropped you off at the same place is that correct?

A That is correct.

Q And were you close to the man that you just identified as Mr. Brown?

A Yes.

Q And you were face to face to him?

A Yes.

THE COURT: How long were you in the bar the Red Bar?

THE WITNESS: Possibly an hour: an hour and a half.

THE COURT: What were the lighting conditions there?

THE WITNESS: I don't think it was too light.

THE COURT: How long were you next to Mr. Brown? Was he next to you, or there?

THE WITNESS: He was sitting right in front of me.

THE COURT: Across the table?

THE WITNESS: Right.

THE COURT: For an hour?

THE WITNESS: It might not have

been that long. I don't know.

THE COURT: And at Debbie's house, what were the lighting conditions?

THE WITNESS: In Debbie's house it was dark.

THE COURT: Dark, and the lights weren't on?

THE WITNESS: There was no light in the kitchen, and there was lights in the kitchen but the baby was sleeping but that was the front room.

THE COURT: Could you see Mr. Brown's face when he came in to pick you up?

THE WITNESS: In the kitchen, yes.

THE COURT: How long did he stay there?

THE WITNESS: Not any more than five minutes.

BY MR. FINER:

Q You also testified that Debbie had told you about a telephone call where they had advised you that they were coming over to talk to you?

A Yes.

Q And after you were informed of that did you call

the police at that time?

A No.

Q And you said that you didn't call the police when you returned?

A No.

Q Either. Did you at any time -- well, strike that. When they first picked you up and took you to this vehicle did you refuse to get in the vehicle?

A No.

Q You said that you were living with Mr. Sampson at this time, isn't that correct?

A No, I was living by myself.

Q And prior to your moving to the trailer, did you live with Mr. Sampson?

A Yes.

Q Did you have a key to the apartment?

A No, I had -- no, I had the key when I was living with him, yes.

Q All right. On December -- this would be the day before the alleged kidnapping attempt, and did you let a Mr. Brooks into Mr. Sampson's apartment?

A No.

THE COURT: What was David's last name in the car?

THE WITNESS: Baer.

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BY MR. FINER:

Q Last question. Have you discussed your testimony that you were about to give with the United States Attorney?

A My testimony?

Q Yes, that you were going to give in court?

A Yes.

Q On many occasions?

A Just a couple.

Q Twice?

A Twice.

Q And did you discuss the testimony that you were going to give with any agents of the FBI?

A We didn't discuss it about court. They just told me, because I had never been in court, they were just telling me what would happen.

Q And when was that?

A I don't remember. It was before I had the other court.

Q Before you had the other court?

A Yes.

Q What other court?

A I didn't know what they call it. There was another hearing.

Q This was prior to the Grand Jury testimony?

A I guess so.

Q And you discussed your testimony with the FBI agent before your Grand Jury testimony, is that your statement?

A Yes.

MR. FINER: Thank you very much.

THE COURT: Any redirect?

MR. PAVONE: Yes, sir, a few, if the Court please.

REDIRECT EXAMINATION

BY MR. PAVONE:

Q Miss Shepherdson, just to clear this problem up abour your testifying: You testified before the Grand Jury before, isn't that correct; the Federal Grand Jury in Albany?

A Yes.

Q At that time there was another lawyer representing the United States, isn't that so?

A Yes. I don't know.

Q When was the first time that you met me?

A When I came out here Wednesday night.

THE COURT: What difference does it make? Obviously she discussed her testimony with you, or she should have.

MR. PAVONE: Yes, sir.

BY MR. PAVONE:

Q Who is Jerry Brooks? He is a new name that came up in your cross-examination?

A Jerry Brooks is the one that did the rip-off deal.

Q He is a black man from Syracuse?

A Right.

Q Now, when you returned home to the apartment at Camden Street, Debbie told you not to leave?

A Yes.

Q Why did she say that?

A Because Dave had been beaten up.

MR. SCELSI: I will object to that as hearsay.

THE COURT: I didn't hear it.

(The previous answer was read by the reporter.)

THE COURT: No, go ahead.

BY MR. PAVONE:

Q Why didn't you leave?

A Debbie told me I hadn't better leave.

Q Were you frightened?

A Yes, and when I came to the door, she frightened me by just asking me if I was all right.

Q Now, when Mr. Brown came to pick you up later that evening, did he put his hand on you when he

was escorting you to the car?

MR. FINER: I will object as a leading question.

THE COURT: I think it is all right overruled.

BY MR. PAVONE:

Q You may answer.

A I think he put his hand on my shoulder. I can't remember that.

Q And why did you get in the car when he told you to get in the car?

MR. FINER: I object.

THE COURT: Overruled.

THE WITNESS: He was standing right in back of me.

BY MR. PAVONE:

Q Now, this incident in the bar, when you stopped in the bar in Pennsylvania --

THE COURT: (Interrupting) Wait a minute. Had he told you that David Baer was in the car?

THE WITNESS: Yes.

THE COURT: Who was David Baer to you?

THE WITNESS: David Baer was

an ex-boyfriend of mine.

THE COURT: How long had he been an ex-boyfriend?

THE WITNESS: How long?

THE COURT: How long?

THE WITNESS: He had been about three or four months, maybe five months.

THE COURT: And had you and he been pretty close?

THE WITNESS: Well, we were close but we had our disagreements.

THE COURT: Well, you had been living with him hadn't you?

THE WITNESS: Yes.

BY MR. PAVONE:

Q Did you observe David Baer's appearance when you were standing by the car?

A Yes.

Q And would you describe his appearance?

A His nose was swelling and he was just sitting back there.

Q And did that frighten you?

A Yes, because I had never seen Dave like that.

Q You testified that at a point in time on the car ride you stopped into a bar in Pennsylvania, is

that correct?

A Correct.

THE COURT: We are not going to go over all of that direct, are we?

MR. PAVONE: I am almost finished.

BY MR. PAVONE:

Q Did that take place before or after the shooting incident?

A After.

Q Now, when you were driving in the car, you testified on cross-examination --

THE COURT: (Interrupting) She was not driving in the car. Did you ask her if she was riding or driving?

MR. PAVONE: When she was riding in the car. I am sorry.

BY MR. PAVONE:

Q When you were riding in the car you testified on cross examination that you had turned around and were facing Brown in the back seat, is that right?

A Yes.

Q And did Mr. Brown have his hands on you at that time?

A Yes.

And what was he doing?

He was holding both wrists.

THE COURT: Both wrists?

THE WITNESS: Yes, both wrists.

THE COURT: And you were turned around facing him, is that it?

THE WITNESS: Yes.

THE COURT: And your arms up over the desk seat?

THE WITNESS: Yes, sir.

BY MR. PAVONE:

Now one more question: Were you provided anything for testifying here today by the government?

A No.

MR. PAVONE: That is all I have, your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. SCELSI:

Last Friday you said that your hands were down behind you. Where were they down to?

They were down.

And as a matter of fact -

THE COURT: (Interruption) Just

a minute, down behind you? Stand up and show us how your hands were.

THE WITNESS: They were in back like this (indicating).

THE COURT: And which way were you facing?

THE WITNESS: He had me turned around.

BY MR. SCELSI:

Q And as a matter of fact, your hands were not being held at all, were they?

A Yes they were.

Q Did the FBI tell you to say that?

A No.

Q Is that what Worst told you?

A No.

Q And we have got four statements here, or three statements, and when you were giving the statement to Mr. Avery and Captain Milks, or Lieutenant Avery on December 11th, you never told them that your hands were being held, did you?

A How are you supposed to remember everything that happens when you are like this?

Q Because that is the way that it happened and that is why --

THE COURT: (Interrupting) Please save your arguments.

BY MR. SCELSI:

Q And on December 15th, you never told anyone that your hands were being held did you?

A No. I guess not.

Q And you never told anyone that your hands were being held until you came into court here last Friday, isn't that correct?

A I don't know.

Q Isn't it true that you were told by the FBI, Mr. Worst, or Mr. Chandler that in order for you to prove a case of kidnapping that you were going to have to testify that somebody held you, and held your arms, isn't that correct?

A That is not correct.

Q Not correct?

A No.

Q Yet you are aware that the information for kidnapping wasn't made until December 17th some six days after this alleged incident?

A Yes.

Q All right. And they never bothered having a preliminary examination because they didn't want you in court to testify?

MR. PAVONE: Objection.

THE COURT: Sustained.

BY MR. SCELSI:

Q Well then it will suffice that before testifying at the Grand Jury you did talk to Mr. Worst and Mr. Chandler, or any of the FBI --

THE COURT: (Interrupting) She already said she did. I hope she did.

MR. PAVONE: For the record, there is no Mr. Chandler that I know of from the FBI.

THE COURT: She certainly talked to the FBI agent.

MR. PAVONE: I think he is from the State Police.

BY MR. SCELSI:

Q And to your knowledge, these two defendants were never arrested for kidnapping Mr. Buer, were they?

A I don't know. He was right along with me.

Q He was right along with you, wasn't he?

A Right.

Q And if I told you that they weren't arrested for kidnapping him --

MR. PAVONE: Objection.

THE COURT: Sustained. If she

knows. Do you know whether they were or whether they weren't?

MR. SCELSI: I would like the Court to take judicial notice --

THE COURT: (Interrupting) How do I take judicial notice? I don't know whether they were or not. You have to prove it if you want to prove it.

BY MR. SCELSI:

Q Just one more question. Mr. Pavone just asked you who Jerry Brooks was because it had just come to light and you said he did the rip-off?

A Right.

Q And you knew about it?

A Because the police had told me about it.

Q The police told you about it?

A And Debbie told me about it, and that is how I was informed of it.

THE COURT: Before or after this incident?

THE WITNESS: It was after David had been -- had been -- after Dave called Debbie, Debbie told me what had happened.

THE COURT: What did she tell you had happened?

THE WITNESS: She told me that Tony had been ripped off for some marijuana, and then Jerry Brown and Tony told me about it more when we were in the car.

BY MR. SCELSI:

Q And the fellow that did the ripping off was Jerry Brooks, whom you had spent December 5th with, isn't that correct?

A I don't know what time it was, or what day.

Q And it was prior to the 10th of December, wasn't it?

A It was way before this happened.

Q And you had seen Mr. Brooks on a number of occasions up in Mr. Sampson's apartment when you were living with him, isn't that correct?

A Very seldom did he come up.

Q Just one more question: Was Jerry Brooks ever in your trailer with you; yes or no?

A Yes.

Q He was in your trailer -- you just, ten minutes ago, said he never was. He was in your trailer, isn't that correct?

A He came down -- he came down for two minutes and left.

Q Are you sure he didn't spend a couple of nights

with you?

A He did not spend a couple of nights with me.

Q Did you ever tell anyone that he did?

A No.

MR. SCELSI: Thank you.

MR. FINER: I have no further questions.

MR. PAVONE: None, your Honor.

THE COURT: Just a minute. Would you come up?

(Whereupon, the following took place at the bench, out of the hearing of the jurors.)

THE COURT: Is Agent Worst going to take the stand?

MR. PAVONE: I am not quite sure. There is a possibility that he will. If there is an identification problem he will, if it becomes significant and it depends upon that, but I don't know and I do not anticipate any one of them at this time.

THE COURT: I think that you are entitled to see this (offering to Mr. Scelsi).

(Counsel perused the document.)

MR. SCELSI: I am wondering whether she actually did go there. I wonder if the record indicates that she went on there on a date?

THE COURT: What day?

MR. SCELSI: December 10th. She said that she did. That is her testimony.

THE COURT: I don't know.

MR. SCELSI: I don't know whether she is telling the truth or not.

THE COURT: But it is collateral impeachment, and do you want me to go through this foot and a half record to see if she went to the welfare office?

MR. SCELSI: Well, because I am very concerned about the truth of her statement, and I think that she is lying through her teeth.

THE COURT: They are not chronological. It is almost impossible to reconstruct the dates, except from the final report.

MR. PAVONE: May I have an opportunity to review that document?

THE COURT: Sure, you can take

a look at it (offering).

MR. SCELSI: The day that she said was in 1975.

THE COURT: These are the days of the reports, and not necessarily the dates that she was there. There is no log here or anything, and they are not in chronological order. I will look through them, and if there is -- I can't imagine what motive she would have to lie that she went to welfare. What difference did it make if she did?

MR. SCELSI: The motive is, your Honor, that we feel that she tried to prove that she -- well, she got involved in this drug deal, and that she tried to cover up by saying she went to welfare.

THE COURT: I don't have any of that in here yet.

MR. PAVONE: I think that the witness testified on cross-examination that she went there.

THE COURT: But according to the report she said she got excited about being involved in drug deals, and that is the

relevant part there, Mr. Pavone. She has not denied it, and you haven't asked it and if you asked, I wouldn't have had to show it to you, but you didn't ask it yet. There it is. I don't know of any report in here that showed that she did not go to welfare on that date, the date being that date. There is nothing here to indicate that she did not.

MR. SCELSI: There is a question of Brooks, and if Brooks is the individual that she just testified did the rip-off, and now she denied talking to Brooks about this rip-off, and I will rephrase the question. That is what I am referring to.

THE COURT: That doesn't refer to anybody about the rip-off on December 10th. It is just generally - well, I hesitated to give this to you. I don't know what you are arguing with me about because I have made it available, and use it.

(Whereupon, the following took place before the Court and the jury.)

BY MR. SCELSI:

Q I want to ask you two or three questions once again, Mrs. Shepherdson. This is relative

to your dealing into drugs. Did or did you not have anything to do with Mr. Brooks -- just let me finish the question -- and Mr. Baer in this alleged rip-off around December 5 or 6 or 7 or 8?

A No.

Q And you deny having any conversation with Mr. Brooks about this rip-off, isn't that correct?

A Yes.

Q And you are denying, again, that you had a conversation with Mr. Sampson about this rip-off, isn't that correct?

A Correct.

Q Now, is everything that you are telling the truth today?

A Yes.

Q About the rip-off, about Mr. Brooks, and about your affairs, and about your inhibitions and so forth, and everything is true that you were telling us?

A Yes.

Q And now, previously you told me that you had very little to do with drugs, and had marijuana once or twice, is that correct?

A I smoked it before, yes.

Q Yes. And you said that you had cocaine on one

occasion?

A Yes.

Q Or more?

A No, just one time.

MR. PAVONE: Excuse me. I believe that we are really plowing the same ground that we have done before.

THE COURT: No, let him get to his point.

BY MR. SCELSI:

Q Have you ever been convicted of any crimes related to drugs?

A None.

Q Were you ever arrested for any crimes relating to drugs?

A No.

Q None?

A No.

Q Did you ever tell anyone that you liked drugs, and drug dealings?

A No.

Q And you are still telling the truth, aren't you, Mrs. Shepherdson?

A Yes.

Q And do you know Lieutenant Avery?

A Yes.

Q And do you remember him?

A Yes.

Q Now, I would like to read --

THE COURT: (Interrupting) Don't read it. The document is not in evidence.

MR. SCELSI: May I have it marked for identification?

THE CLERK: Defendant's Exhibit A, marked for identification.

(Document marked Defendant's Exhibit A for identification.)

MR. SCELSI: This is a report of the --

THE COURT: (Interrupting) Please just mark it, without any speeches.

MR. SCELSI: Thank you.

THE COURT: It has a limited use.

BY MR. SCELSI:

Q You had, on occasion, applied for --

MR. PAVONE: (Interrupting) Excuse me. I object to counsel referring to the document any further until he has handed it to the witness and she has had an opportunity to review it.

MR. SCELSI: I would like to hand it to her and have her read it, your Honor and the date (offering to witness).

BY MR. SCELSI:

Q Would you tell the jury what it is?

THE COURT: No, ask her questions.

BY MR. SCELSI:

Q Whose names are on that record?

THE COURT: Sustained.

Let me have the document. Obviously you don't know how to use it.

Did you ever tell anyone that you enjoyed the excitement of drug use?

THE WITNESS: No, I didn't.

THE COURT: Did you tell that to Agent Worst?

THE WITNESS: No.

THE COURT: Did you tell it to Lieutenant Avery?

THE WITNESS: No.

THE COURT: Did you tell it to Agent Worst?

THE WITNESS: No.

THE COURT: Did you tell it to

Peggy Russell?

THE WITNESS: No.

THE COURT: Did you ever tell that to Peggy Russell?

THE WITNESS: No.

THE COURT: And who is Peggy Russell?

THE WITNESS: She was a so-called girlfriend that I thought I had.

THE COURT: Did you ever tell Peggy Russell that you had been arrested for drugs?

THE WITNESS: No.

THE COURT: Were you ever arrested for drugs?

THE WITNESS: I have never been arrested.

THE COURT: All right.

MR. SCELSI: I would like to offer Defendant's Exhibit A, to the jury.

MR. PAVONE: I object.

THE COURT: Overruled.

MR. SCELSI: Those are the --

THE COURT: (Interrupting) I have overruled the objection.

MR. SCELSI: May I read to the jury what --

THE COURT: (Interrupting) You can, at the appropriate time.

MR. SCELSI: Thank you.

THE CLERK: Defendant's Exhibit A, in evidence.

THE COURT: May I see that exhibit?

MR. SCELSI: Yes (offering).

THE COURT: All right.

(Defendant's Exhibit A for identification, received in evidence.)

BY MR. SCELSI:

Q Just one or two more questions. Were any charges dropped against you, for the testimony on this case? Any arrest charges?

A I have never been arrested.

Q You had a -- how many children did you have?

A Two.

Q And you had one with you?

A Yes.

Q And where is the other child?

A I had her when I was young, and I gave her up for adoption.

Q All right. You had no continuous problem with the welfare --

MR. PAVONE: (Interrupting) Objection.

THE COURT: Sustained. I wish that you would make timely objections, Mr. Pavone. I can't represent you here. Where the other child is has nothing whatsoever to do with this case. It is blatantly immaterial. Wake up.

MR. PAVONE: Yes, your Honor.

THE COURT: Go ahead.

Well, we will take our luncheon recess.

(Whereupon, the jury was excused.)

THE COURT: Court stands in recess for half an hour.

(Whereupon, at 12:30 p.m. an adjournment was taken until 1:00 p.m.)

- - -

AFTERNOON SESSION

THE COURT: All right, proceed.

(Whereupon, the following proceedings took place before the Court and the jury.)

REDIRECT EXAMINATION

MR. PAVONE: May I see Defendant's Exhibit A.

BY MR. PAVONE:

Q I have one question, Miss Shepherdson: In connection with this complaint filed by Peggy Russell, did the Social Services people take any action whatsoever against you?

A Not on that one.

MR. PAVONE: Thank you very much.

RECROSS-EXAMINATION

BY MR. SCELSI:

Q You say not on that one. Were there a number of other complaints filed against you?

THE COURT: Sustained. This is not proper recross. He only asked one question. It is immaterial.

BY MR. SCELSI:

Q On this complaint, it was filed on 12/30/75, is

that correct?

A I didn't know about it until just now.

Q Well, is it true that the reason nothing was done on this particular complaint was in exchange for your testimony against the defendant here?

A No.

Q And is it true, and you know yourself that the FBI got a hold of all of these records?

A I don't know that, no.

Q Mr. Worst is with the FBI, isn't that correct?

A Yes.

Q And his name appears on this. Do you recall that?

MR. SCELSI: I would like to offer this in evidence.

THE COURT: His name appears on it?

BY MR. SCELSI:

Q Did you ever get in trouble with the Social Services because you left drugs around for your child?

A No.

Q Did you ever get in trouble with them for neglecting your child?

THE COURT: Sustained. It is not relevant. It is obviously an attempt to be prejudicial. You are excused.

(Whereupon, the witness was excused.)

THE COURT: If this were an adversary proceeding you would never get away with it.

MR. PAVONE: The Government calls Mr. Richard Lee Fitch.

R I C H A R D L E E F I T C H,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Mr. Fitch, are you appearing here today pursuant to a subpoena?

A Yes.

Q Now, Mr. Fitch, I would like to direct your attention, please to December 10th, 1975. Where were you living at that time?

A At Camden Street, in Johnson City.

Q Johnson City, New York?

A Yes.

Q And were you living alone?

A I was living with Debbie Buchanan.

Q And were you working at that time, Mr. Fitch?

A Yes, I was.

Q And what hours did you normally work?

A Four to twelve thirty at night.

Q Pardon me?

A Four thirty in the afternoon until twelve thirty at night.

Q Where is that?

A The General Electric plant at North Silver, New York, or Westover, New York.

Q Now, on December 10th, 1975, were you home in the morning and afternoon of that day?

A Yes, I was.

Q And did you receive any visitors?

A Yes, I did.

Q And who were they?

A Anthony Cavallaro, Dave Baer, and later it was Jerry Brown.

Q And what time of the day was that, do you recall?

A I believe around one thirty; two o'clock.

Q Prior to that time, Miss Shepherdson did come to the house, as well?

A Yes, she had.

Q Who was home on that day, besides yourself?

A Dave Baer was, and Mary was there, and then Jason, her child, and it was Debbie and Jason --

Q (Interrupting) Would you please keep your voice up. We want everybody in the room to hear you.

Now, did Mary say what the purpose was for her visi· to your apartment?

A She had to go to Social Services to see about assistance.

Q So she went and left Jason there for somebody to babysit him?

A Yes.

Q Now, at the time that Anthony Cavallaro and David Baer and Brown came to visit you, was Mary at the apartment at this time?

A Yes, she was.

Q And she was at the apartment?

A Yes.

Q And did she subsequently leave while they were there?

A Yes.

Q And what did these gentlemen want?

A They wanted to see Richard Sampson to find out the whereabouts of Jerry.

Q I am sorry, I didn't hear you.

A They wanted to see Richard Sampson to find out the whereabouts of a man by the name of Jerry.

Q And did they say Jerry who?

A No.

Q And did they say why they wanted to see Mr. Sampson?

A Because they said that this Jerry had ripped them off.

Q Now, why did they want to talk to Sampson?

A Because they wanted -- because -- because they figured Sampson knew where Jerry was.

Q That is what they said to you?

A Yes.

Q And did they display any weapons that afternoon?

A No.

Q Then, what happened, Mr. Fitch? Did they go up to Sampson's apartment?

A Yes, they did.

Q And did you go with them?

A Yes.

Q And what happened at Sampson's apartment?

A They looked through the apartment, and they found nothing implicating Mr. Sampson with Jerry.

Q And who went into the apartment?

A I went in, and a man later identified to me as Jerry Brown.

Q And can you recognize the man later identified to you as Jerry Brown in the courtoom here today?

A Yes, he is sitting over there behind the able.

THE COURT: Let the record indicate that he has identified Brown.

BY MR. PAVONE:

Q How did you get into Sampson's apartment?

A I used a knife to open the door.

Q You opened the door?

A Yes.

Q And was Sampson home? I take it he wasn't home?

A No, he wasn't.

Q And did they request that you open the door to Sampson's apartment?

A Yes.

Q And why did you do that?

A Because I was a little bit afraid of them.

Q Afraid of whom?

A Afraid of Jerry Brown, and Anthony Cavallaro.

MR. SCELSI: I will object.

THE COURT: Overruled.

BY MR. PAVONE:

Q About what time was it that you entered Mr. Sampson's apartment?

A I believe it was around 2:30.

MR. SCELSI: 2:30?

THE COURT: Yes, 2:30.

BY MR. PAVONE:

Q And what happened when you left the apartment?

A We went back down to my apartment.

Q And did there come a time when Mr. Cavallaro and Mr. Brown left the apartment, in the afternoon?

A Yes.

Q And do you recall what time that was?

A Around 3 or 3:30.

Q And was Mary Shepherdson there at that time?

A No, she was not.

Q Now, did Mary Shepherdson subsequently come back to the apartment?

A Yes, she did.

Q And did you take her anywhere that evening?

A Yes, I took her down to where she lived, and she went down there to get money, so she could get fuel for her trailer.

Q And where was that?

A She worked at the Doll House.

Q Then what did you do? Did you return Mrs. Shepherdson to your apartment?

A Yes, I did.

Q And where did you do?

A I went to work.

Q And this day was a weekday, I take it?

Q Now, Mr. Fitch, did you return to the apartment at 5 Camden Street, after you got through from work?

A Yes, I did.

Q And what time was that?

A It would have been around 12:45.

Q The next morning?

A Yes.

Q And that was December 11th, is that correct?

A Right.

Q Was anybody home when you returned to the apartment?

A Debbie was there, and the two children.

Q Debbie and who?

A The two children.

Q All right. And did you go to sleep immediately when you got home?

A No, I did not.

Q What did you do?

A I sat up and read the paper.

Q And what happened next? Did you receive any visitors that evening?

A Yes.

MR. FINER: Objection. We have got to put the time together.

THE COURT: It would help.

MR. PAVONE: He says 12:45 he returned from work.

BY MR. PAVONE:

Q You sat there reading, is that correct, Mr. Fitch?

A Yes.

Q And then did you subsequently receive some visitors that evening?

A Yes, sir, around 2:30 Anthony Cavallaro came with Mary Shepherdson.

THE COURT: Is that 2:30 a.m.?

THE WITNESS: Yes.

BY MR. PAVONE:

Q And you say that Anthony and Shepherdson came to the apartment?

A Yes.

Q And did he say anything when he came in?

A No, he did not.

Q Was he displaying a weapon at that time?

A Yes, he was.

Q And what kind of a weapon --

MR. SCELSI: (Interrupting) I will object.

THE COURT: You are leading all over the place. Let him tell us what he saw,

and what was said.

MR. PAVONE: Yes, sir.

BY MR. PAVONE:

Q Did Mr. Cavallaro say anything when he came in?

A No, he did not.

Q Did you observe anything when Mr. Cavallaro came into the house, out of the ordinary?

A He was carrying a weapon in his left hand.

Q And what kind of a weapon was that?

A It was an automatic pistol of some sort.

Q And did Mary Shepherdson say anything when she returned?

A Yes.

Q What did she say?

MR. SCELSI: I will object.

THE COURT: Who was present?

BY MR. PAVONE:

Q Who was present, Mr. Fitch, when Mr. Cavallaro came in at 2:30 in the morning?

MR. SCELSI: He is leading again.

THE COURT: That is not leading.

MR. SCELSI: All right, I will withdraw it.

BY MR. SCELSI:

Q Okay, Mr. Fitch, go ahead.

A Anthony Cavallaro and Mary Shepherdson came back to my apartment. Debbie was in bed asleep, and the two children were there.

THE COURT: Who was in the room when Cavallaro came in?

THE WITNESS: Just me.

THE COURT: Just you. Was Mary Shepherdson there?

THE WITNESS: Yes, she came in.

THE COURT: In with Anthony?

THE WITNESS: Yes.

THE COURT: And was Brown there?

THE WITNESS: No, he was not, sir.

THE COURT: Go ahead. Now, what did Mr. Shepherdson say, and I will receive it only as against the one who was present, Cavallaro, and not Brown.

BY MR. PAVONE:

Q What did Mary Shepherdson say?

A After Anthony Cavallaro had left the apartment --

MR. SCELSI: After?

THE COURT: After he had left? Sustained.

BY MR. PAVONE:

Q Did she speak at the time that Cavallaro was

A No, she did not.

THE COURT: Next question.

BY MR. PAVONE:

Q Did she say something as soon as he left?

THE COURT: No, sustained.

MR. PAVONE: Sir, I think --

THE COURT: (Interrupting)

Sustained. Next question.

BY MR. PAVONE:

Q Did you observe anything about the appearance of Mary Shepherdson?

A She appeared to be very terrified.

MR. SCELSI: Wait a minute.

THE COURT: Strike that out.

Sustained. Strike it out. That is a conclusion. What did he observe about her?

BY MR. PAVONE:

Q What did you observe about Miss Shepherdson?

A She was shaking, and very -- she looked like she wanted to cry.

MR. SCELSI: I object to this as a conclusion.

THE COURT: All right.

BY MR. PAVONE:

Q What happened next, Mr. Fitch?

A Later that morning I got a phone call from Olson who was saying that Richard Sampson had been shot.

MR. SCELSI: I will object as hearsay.

THE COURT: Sustained, and strike it out.

BY MR. PAVONE:

Q Prior to that time, Mr. Fitch, was there any other noise in the house, and did you hear anything after Mary Shepherdson had returned?

MR. SCELSI: That is leading.

THE COURT: Sustained.

BY MR. PAVONE:

Q Mr. Fitch, let me ask you this: Did anything else unusual happen that night?

THE COURT: Sustained.

BY MR. PAVONE:

Q Mr. Fitch, when Mr. Cavallaro and Mr. Brown visited you in the afternoon, you went up to Sampson's apartment, and did you call the police to advise them that you had entered Sampson's apartment?

A No, I did not.

Q Why didn't you do that?

MR. SCELSI: Objection.

THE COURT: Sustained.

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BY MR. PAVONE:

Q Did you call the police when Anthony Cavallaro came into your home displaying a gun, at 2:30 in the morning?

A No, I did not.

Q Why didn't you call the police?

THE COURT: Sustained.

MR. PAVONE: If the Court would bear with me for 30 seconds, I would like to check my notes.

I have no further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SCELSI:

Q You don't even know if the gun was loaded, Mr. Fitch? You don't know whether this alleged gun was loaded, do you?

A No, I do not.

Q What time did you go to work that night?

A 4:30.

Q 4:30?

A Yes.

Q Did you walk to work or drive to work?

A I walked.

Q And at 3 o'clock Mary Shepherdson had left for

Binghamton, isn't that correct?

A Yes.

Q And how long was she gone?

A Approximately half an hour.

Q For the benefit of the jury, how far is Binghamton from where you lived at that particular time?

A I would say it is roughly ten miles to the center of Binghamton.

Q Ten miles. And you were aware that she was going to go to Welfare, or something to that effect?

A Yes.

Q How far is the Johnson City Police from where you live?

A Two or three miles.

Q And isn't it true that the Broome County Sheriff and the State Police regularly patrol the road --

MR. PAVONE: (Interrupting) Objection, your Honor.

THE COURT: I suppose they have a telephone, too. Go ahead.

BY MR. SCELSI:

Q Where you live was adjacent to one of the main highways between Endicott and Binghamton, isn't that correct?

A Yes.

Q And it is correct, isn't it, that in front of your apartment where you were living, there was a street light?

A Yes.

Q And it was working to your knowledge, isn't that correct?

A Yes.

Q And was it slippery out that night?

A No.

Q Did you look at the note that was found in the apartment?

A Yes.

Q And can you recall what it said?

A Not the exact words.

THE COURT: But the best that you can remember, what did it say?

THE WITNESS: It said, "Jerry would fix Sampson."

BY MR. SCELSI:

Q And did it say anything about how Jerry Brooks got into the apartment?

A No.

Q Do you recall that it said that Mary let him in?

A No.

Q You don't recall that?

A It was not on the note.

THE COURT: What time did you get home from work when you went to work at 4:30, you said?

THE WITNESS: Yes.

THE COURT: And what time did your shift end?

THE WITNESS: It ends at 12:30.

THE COURT: And what time did you get home after you drove home?

THE WITNESS: I walked home.

THE COURT: What time did you get home?

THE WITNESS: It takes about 15 minutes.

THE COURT: Fifteen minutes to get home?

THE WITNESS: Yes.

THE COURT: And quarter of one in the morning you got home?

THE WITNESS: Yes, your Honor.

THE COURT: And it was after that that Cavallaro and Mary came in?

THE WITNESS: Yes, your Honor.

THE COURT: Well, actually when

you got home you went to sleep, and then you woke up, isn't that correct?

THE WITNESS: I can't remember exactly.

THE COURT: You say it was about 2:30 when they came in?

THE WITNESS: Yes.

THE COURT: And you don't remember what you were doing between 12:45 and 2:30?

THE WITNESS: Your Honor, about 1:30 I received a phone call from Dave Baer.

THE COURT: I see.

THE WITNESS: And he wanted to know --

THE COURT: (Interrupting) Don't tell us what he said. What did you do after that?

THE WITNESS: I sat up and read the paper.

MR. SCELSI: I didn't hear him.

THE COURT: He said he sat up and read the paper.

BY MR. SCELSI:

Q Because you knew that they were bringing Mary over to the apartment, isn't that correct?

A No, I did not.

Q You didn't. Well, Debbie was asleep when you got home though, wasn't she?

A Yes.

Q And when you got home you went to sleep, but you were awakened by a phone call from Baer, isn't that right?

A Yes.

Q And after Mary Shepherdson came in, you all went back to sleep again, isn't that correct?

A No.

Q What happened to Mary?

A After about half an hour, she laid down on the couch in the front room and went to sleep.

Q You gave her a beer or something?

A No.

Q Are you sure of that?

A Yes.

Q And it is true that Mary just previous to this had been living with Sampson, isn't that correct?

A Yes.

Q And I believe that you made a statement to the Broome County Sheriff's Department on December 11th that Sampson and Jerry Brooks were rip-off artists, isn't that correct?

A Yes.

Q And Mary had been living with Sampson for a month or more, isn't that correct?

A Yes.

Q And Sampson had been up to Mary's apartment on a number of occasions, isn't that correct?

A Yes.

Q And Mr. Brooks had been over to Mary's trailer on a number of occasions, isn't that correct?

MR. PAVONE: Objection. This witness is incompetent to answer that.

THE COURT: If he knows.

BY MR. SCELSI:

Q Is that correct?

A I do not know.

Q Well, it would be fair to say that, isn't it correct in your own knowledge, that Mary Shepherdson was pretty well acquainted with Jerry Brooks, isn't that correct?

A I wouldn't know if she was well acquainted with him or not.

Q But you have seen them on a number of occasions in the apartment above you, isn't that right?

A Yes.

Q And you saw them come in and out, Jerry Brooks and

LaMont?

A I saw Jerry Brooks and LaMont.

Q And when you saw Mr. Brooks, and Mr. Cavallaro on that afternoon, I believe that you testified that they had no weapons, isn't that correct?

A None that I could see.

Q And isn't it true that Mary Shepherdson got involved in drug dealings prior to this?

MR. PAVONE: Objection, your Honor.

THE COURT: Does he know?

BY MR. SCELSI:

Q Do you know?

A Excuse me, would you repeat the question?

Q Isn't it true, Mr. Fitch, that Mary Shepherdson, herself, got involved --

THE COURT: (Interrupting) The form of the question is bad. You start right out with it.

BY MR. SCELSI:

Q Do you know whether or not Mary Shepherdson was involved in drug deals, also, prior to December 10th?

A No, I do not.

Q Do you know whether she took drugs?

MR. PAVONE: Objection, again.

THE COURT: Overruled.

THE WITNESS: I saw her smoke marijuana on occasions.

BY MR. SCELSI:

Q Any other drugs?

A No.

Q So there is no question then -- just one or two moments. Mary Shepherdson was at the apartment before three o'clock, when Mr. Cavallaro was there, and Mr. Brown, isn't that correct?

A Yes.

Q And they had conversations, whether or not you know what it was, but there was conversations between them, right?

A Yes.

Q And there was a general discussion of Sampson and Brooks and so forth?

A Yes.

Q And Mary was involved, wasn't she?

MR. PAVONE: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCELSI:

Q Do you know whether Mary Brooks was involved in the conversation about where the location of Jerry Brooks was?

A I don't remember.

Q She was in the room, wasn't she?

A Yes.

THE COURT: This is at three o'clock in the afternoon?

THE WITNESS: Yes, your Honor.

BY MR. SCELSI:

Q And at that time -- I will withdraw that.

MR. SCELSI: I have no more questions.

REDIRECT EXAMINATION

BY MR. PAVONE:

Q Mr. Fitch, did you go upstairs to Sampson's apartment alone, when you went upstairs to Sampson's apartment?

A No, I did not.

Q And who went with you?

A Jerry Brown.

Q And did Tony Cavallaro go with you?

A No.

Q And do you know whether Mary Shepherdson was in the apartment the entire afternoon?

A No.

Q You were upstairs a certain part of the time, isn't that correct?

A Yes.

Q And you were [illegible] Mr. Carol [illegible] the entire afternoon [illegible] were you [illegible] correct?

A No, I wasn't.

MR. PAVONE: Thank you. I have no further questions.

THE COURT: You are excused.

(Thereupon, the witness was excused.)

MR. PAVONE: The Government calls Barbara Buchanan.

BARBARA BUCHANAN

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Miss Buchanan, are you married?

A No, divorced.

Q Are you divorced from Mr. Fisch?

A Yes.

MR. PAVONE: I stand corrected. I was not aware of that fact. I thought that they were still married.

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BY MR. PAVONE:

Q Now, are you appearing here pursuant to a subpoena?

A Yes.

Q Now, Miss Buchanan, I direct your attention to December 10th, 1975. Where were you residing at that time?

A 5 Camden Street.

Q Alone?

A With my husband.

THE COURT: I cannot hear you.

BY MR. PAVONE:

Q Would you please speak up, and speak slowly and distinctly, if you can?

A With my husband.

Q And who was that?

A Richard Fitch.

Q Now, Miss Buchanan, would you please tell us in your own words the events that took place on December 10th as best you can recall them?

A That afternoon, Tony Cavallaro --

Q (Interrupting) Please speak right out.

A Tony Cavallaro and Jerry Brown, and some guy, David Baer, came to my house.

Q Came to your house?

A Yes.

Q In the afternoon.

A Yes.

Q And did Mr. Cavallaro and Mr. Brown -- are they in the courtroom today?

A Yes.

Q And would you indicate where they are?

A Anthony is over here (indicating).

THE COURT: Tell us what he is wearing.

THE WITNESS: A tan suit.

THE COURT: And what is the color of the jacket?

THE WITNESS: Yellow.

THE COURT: Let the record indicate that the witness has identified Cavallaro.

Now, do you see Brown?

THE WITNESS: Yes.

THE COURT: Where is he, and what is he wearing?

THE WITNESS: A blue jacket. He is at the end of the bench.

THE COURT: The table there?

THE WITNESS: Yes.

THE COURT: All right, let the

record indicate that she has identified Brown.

BY MR. PAVONE:

Q Now, referring to the afternoon that these gentlemen came to your house to visit.

A Yes.

Q And did they say what they wanted?

A They were looking for Sampson.

Q Who was looking, do you know? Cavallaro and Brown?

A Yes.

Q And did they say anything else? Did they say why they were looking for Sampson?

A For a rip-off.

THE COURT: I can't hear you.

BY MR. PAVONE:

Q Please speak up to the Judge and the jury so they can hear you.

A For a drug rip-off.

Q Now, about what time do you recall that was, in the afternoon? Do you recall?

A No.

Q Was Mr. Cavallaro and Mr. Brown in your apartment the entire afternoon?

A No, they left.

Q What time was that?

A Two o'clock.

Q Well, when they were in your apartment, did either of them use your telephone?

A Yes, they did.

Q And who was that?

A Tony.

Q Mr. Cavallaro?

A Yes.

Q And do you recall what Mr. Cavallaro said on the telephone?

A He asked his wife to get his piece out of the dresser, and -- his gun.

Q And he made a telephone call?

A Yes.

Q And he demanded a gun be delivered to your apartment?

A Yes.

MR. SCELSI: Objection, your Honor.

THE COURT: He was just summarizing what was said.

MR. PAVONE: She seems timid and it seems difficult.

THE COURT: That is what you are supposed to teach them not to be, during your interviews with them before a trial.

MR. PAVONE: Yes, your Honor.

BY MR. PAVONE:

Q Please speak up so we can all hear. We are very interested in what you know, okay, and what you have observed.

A Yes.

Q Now, did Mr. Cavallaro receive a visitor in your apartment that afternoon?

A He picked up the gun from his wife.

Q You observed this from your apartment?

A Yes.

Q And did he bring this weapon into your apartment?

A Yes.

Q And then what happened next?

A He asked my husband to break and enter Mr. Sampson's apartment.

Q Anthony asked him this?

A Yes.

Q Okay. And about what time did you say you asked these gentlemen to leave?

A Two or three in the afternoon.

Q Two or three in the afternoon, you say?

A Yes.

Q And was Mary Shepherdson in your apartment the entire afternoon?

A She had gone to the Welfare office.

Q About what time did she return?

A Six.

Q Six o'clock?

A Yes.

Q And did she go out several times during the day?

THE COURT: When she returned, did you tell her anything about what had happened while she was gone?

THE WITNESS: Yes.

BY MR. PAVONE:

Q What did you tell her?

A I told her that Dave Baer had called me, and told me he had been beaten up by Anthony Cavallaro.

MR. FINER: I object.

THE COURT: Strike that. What happened? Did you tell her about what Tony had done while she was gone?

THE WITNESS: She was there during that time.

THE COURT: She saw this?

THE WITNESS: Yes.

BY MR. PAVONE:

Q Do you know how she got to the Welfare office?

A This skinny guy took her.

Q And you don't know his name?

A No.

Q All right. Then what happened that night? Was Mary Shepherdson in your apartment that night?

A No. David called me and said that he and Anthony were coming over to get her.

Q And is that what you told Mary Shepherdson?

A Yes.

MR. FINER: I object.

THE WITNESS: And Mary asked me if she could hide.

MR. SCELSI: I object.

THE COURT: Yes, strike that out.

BY MR. PAVONE:

Q Now, Miss Buchanan, when Miss Shepherdson was there in your apartment that night, did you say anything to her?

A About the phone?

Q Yes, tell me what you said to Miss Shepherdson.

A Tony --

MR. SCELSI: (Interrupting) Well, that is hearsay.

THE COURT: Sustained. Ask her who was present.

BY MR. PAVONE:

Q Who was present that night when --

THE COURT: (Interrupting) Were any of the defendants present?

MR. PAVONE: No.

THE COURT: Then it is not admissible. Next question.

MR. PAVONE: Ca I be heard on this?

THE COURT: No.

BY MR. PAVONE:

Q Tell me, Miss Buchanan, was Mary Shepherdson in your apartment that evening?

A Yes, she was.

Q The evening of December 10th. Did anybody come to call on her that evening?

A Yes, David called her.

Q No, did anybody come, physically, to your apartment?

A Yes, Jerry Brown.

Q Do you recall who was there?

A Jerry Brown.

Q And is that the man that you identified earlier as being in the apartment earlier that afternoon?

A Yes.

Q And was he displaying any weapons at that time?

A Yes, he was.

Q What kind --

MR. SCELSI: I will object.

THE COURT: I guess he doesn't know how to ask a question without leading. What did you see?

THE WITNESS: I seen a gun in Jerry's hands; under his belt.

BY MR. PAVONE:

Q Now, when Jerry Brown was in the apartment, did he say anything?

A Yes, he told her to get her coat and somebody wanted to talk to her in the car, and he took her arm.

Q And did they leave the apartment?

A Yes.

Q And did you observe them depart?

A Yes.

Q And what did you see?

A I seen them get into a big car and they pushed Mary into it.

Q Did you recognize the car?

A Just a big dark colored car.

Q After you saw Mary get pushed into the car, did you call the police?

A No.

Q Why not?

A I called Sampson.

Q Pardon?

A I called Sampson and --

MR. SCELSI: (Interrupting) Wait a minute. I can't hear the answer.

THE COURT: Sustained.

MR. PAVONE: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. SCELSI:

Q The big car was right out in front of the apartment, right?

A Yes.

Q And in broad daylight -- there was a street light, am I right, in front of your apartment?

Yes.

Q And across the street there was a parking lot for McDonald's, isn't that right?

A Yes.

Q And the place was all lighted up, isn't that right?

A Right.

Q And when Mr. Brown got there, actually you knew someone was coming to talk to Mary, isn't that correct?

A Yes, it is.

Q And you had received a phone call from Mr. Baer?

A Yes.

Q And Mary knew?

A Yes.

Q All right. And your first knowledge that some was coming was about what time? Was it six o'clock or so?

A Yes.

Q And what time did Mr. Brown get there?

A I don't know. I didn't look at the clock. Exactly.

Q What?

A I don't know what time.

THE COURT: About what time?

THE WITNESS: Seven.

THE COURT: Seven p.m.?

THE WITNESS: Yes.

THE COURT: Was it dark?

THE WITNESS: Yes.

BY MR. SCELSI:

Q Now, Mary Shepherdson was around that afternoon while Cavallaro and Brown were there, isn't that correct?

A Yes, sir.

Q And she had some conversation with them, right?

A Not that much. Some.

Q Well, she knew about this drug rip-off, didn't she?

THE COURT: How would she know what was in your mind? I will sustain any objection to that question.

BY MR. SCELSI:

Q Did you have a talk with her about this rip-off that afternoon, or the day before?

A No.

Q How long had you known Mr. Cavallaro?

A Three years.

Q Pardon?

A Three years.

Q And you had been to his home?

A No.

Q A I actually on December 10th, 1975, were you married then, or just living with Mr. Fitch?

A Living with him.

Q And since then you got married and divorced is that correct?

A Yes.

Q And you are really not timid, are you?

MR. PAVONE: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCELSI:

Q You and I had a conversation about this on one occasion, isn't that correct?

A Yes.

Q Approximately, I think a week ago; July 5th?

A Yes.

Q Now, we had a discussion about Mary Shepherdson, isn't that true?

A Yes.

Q And what did you tell me then about Mary Shepherdson, what you knew about her?

A I don't remember.

Q Did you tell me she had been involved in drug rip-offs?

MR. PAVONE: Objection, your Honor. This witness is incompetent to testify concerning that.

THE COURT: Just what she told counsel.

BY MR. SCELSI:

Q You have known Mary Shepherdson for quite awhile, isn't that correct?

THE COURT: I don't know what difference it would make if she were involved in drug rip-offs. It is not material.

MR. SCELSI: I think that it is material that the veracity of Mary Shepherdson's testimony -- well, that is what I am trying to

get at.

THE COURT: All right, go ahead.

BY MR. SCELSI:

Q Did you tell me you thought she was involved in this particular deal?

MR. PAVONE: Objection.

THE COURT: Overruled.

BY MR. SCELSI:

Q What is your answer?

A No.

Q Do you remember the conversation that we had outside of your apartment?

A No, I don't.

Q Pardon?

A No,

Q You don't even remember the examination?

A No.

Q You mean that you talked to me a week ago and you can't remember that you talked to me is that right?

A Yes, I remember talking to you.

Q Do you remember talking to the Grand Jury, and it has no date, but I imagine it is back in probably February or March of this year?

A Yes, I do.

Q And do you remember being asked -- well, let's go

back a little. Do you remember giving a statement on December 11th to Captain Milks of the Broome County Sheriff's Department?

A Yes.

Q And do you remember telling him about the December 5th meeting, 1975?

A Yes.

Q Did you tell the jury what you told him with respect to this meeting involving Mary Shepherdson, Jerry, and Dave --

MR. PAVONE: I object.

THE COURT: Sustained. I don't know what this is.

MR. SCELSI: May I approach the bench?

THE COURT: No, make me an offer of proof.

(Whereupon, the following took place at the bench, out of the hearing of the jury.)

THE COURT: I am convinced that you have absolutely no sense of materiality. Just a minute.

MR. SCELSI: There is a statement there about the meeting. Mary Shepherdson

denied that meeting.

THE COURT: If you want to go ahead, it is your funeral and your client's, and not mine.

(Whereupon, the following proceedings took place before the Court and the jury.)

BY MR. SCELSI:

Q Isn't it true that Mary Shepherdson told you that she took Jerry down to Debbie Buchanan's house a week before, talking about the drug deal?

A Yes.

Q And do you remember -- do you remember the statement that she supposedly found in the apartment upstairs that afternoon?

A Yes, I do.

Q And isn't it true that the statement said, in essence, and this is a statement left by Jerry Brooks, a letter --

MR. PAVONE: Objection, your Honor. That has not been established at all.

MR. SCELSI: I think that --

THE COURT: (Interrupting) Put a question.

BY MR. SCELSI:

Q Did you see the note that was upstairs, or read the contents that was found in Mr. Sampson's apartment?

A Yes.

Q And can you tell me what the contents of this --

THE COURT: (Interrupting) Who was the note addressed to?

BY MR. SCELSI:

Q Who was that note addressed to?

A Sampson.

Q And who was it signed by?

A Jerry Brown.

Q Who?

A No, Jerry Brooks.

Q And what did the note say?

A It says that Sampson would get paid after they got done dealing with a bunch of freaks.

Q Well, I can't hear you. Would you read what you told the --

MR. SCELSI: This is your statement?

MR. PAVONE: That is not my statement.

MR. SCELSI: Let me lay a

foundation.

BY MR. SCELSI:

Q You gave a statement on December 11th of 1975 to Mr. Milks, Captain in the Broome County Sheriff's Department?

A Yes.

Q Now, all of this was the day of the incident, right?

A Yes.

Q And all I am asking you is if you would please read the statement as to what that note said, and I am referring to the note from Jerry Brooks to Mr. Sampson, and right here (indicating and offering), and it is right there.

A Oh.

"My luggage is here, I have a rip-off deal to do in Binghamton with some freak. Don't worry, you'll get your money out of it. Mary let us in the apartment. The money is in the owl."

Q "Mary let us in the apartment," is that right? And that is Mary Shepherdson, isn't that correct?

MR. PAVONE: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. SCELSI:

Q So Mary was involved in the rip-off --

MR. PAVONE: (Interrupting)

Objection, your Honor.

THE COURT: Overruled.

BY MR. SCELSI:

Q Wasn't she?

A I don't know.

Q Well, do you remember talking to the Grand Jury, again?

A Yes, I do.

Q And do you remember talking about Mary getting home about six o'clock in the afternoon?

A Yes.

Q And what did she tell you about her telephone call to Jerry Brooks?

Would you like me to refresh your recollection? You are talking about Cavallaro and Brown and Baer had left, and the question posed to you was what had happened next, and your answer was, "Mary came home at six and said she called Jerry Brooks and warned them not to come down because there were people waiting for him."

A Yes.

Q This is what Mary told you, isn't that right?

A Yes.

A And she knew where Jerry Brooks was all of the time, didn't she?

MR. PAVONE: Objection.

THE WITNESS: Yes.

THE COURT: Sustained.

BY MR. SCELSI:

Q Now, with reference to the telephone call that -- let me rephrase that. You were asked by Mr Pavone if you had visitors that afternoon, isn't that correct?

A Yes.

Q And that is what they were. That is what Mr. Cavallaro was, was a visitor, isn't that right, and the rest of them?

A Well --

THE COURT: (Interrupting) I suppose someone who comes to someone's home is a visitor. How do you think that the jury can draw any conclusion?

BY MR. SCELSI:

Q And that night when you received a phone call you were aware that they were coming back to see you again, isn't that correct?

A Yes.

Q And you made that known to Mary, right?
A Yes.
Q And nobody called the police, did they?
A No.
Q Just answer yes or no. And as a matter of fact, after Mary Left there with Mr. Brown, you went to bed, didn't you? Just answer yes or no.
A No.
Q Did you go to bed shortly thereafter?
A No.
Q Well, weren't you asleep when Mary got home?
A Yes.
Q And when Mr. Brown came in and talked to you and Mary, Mary was in the kitchen, isn't that correct?
A I don't --
Q (Interrupting) When Mr. Brown came in to talk to you and Mary, Mary was in the kitchen, isn't that correct?
A Yes.
Q And there was conversation about the children, isn't that right? There were two small children there, isn't that correct?
A Yes.
Q And didn't Mr. Brown comment and ask what the name of the children were?

A No.

Q He didn't? Wasn't there any conve sation to the fact that he also had a son, Jason, the same name as Mary's son?

A No.

Q You don't prefer to remember that, correct. Dave Buchanan is your cousin, isn't he?

A Yes.

MR. PAVONE: Objection. The name was not mentioned.

MR. SCELSI: David Baer -- well, David Buchanan, and I think it has been in the case --

THE COURT. (Interrupting) Put your questions, please.

BY MR. SCELSI:

Q Do you know if Dave Baer was in the car that night?

A Yes, he was.

Q And he is your cousin?

A Yes.

MR. SCELSI: Your Honor, I have just a couple of more questions.

BY MR. SCELSI:

Q When we were talking about Mary Shepherdson a week ago, and she didn't know -- is it true or isn't it

true that she had known Jerry Brooks for a period of time?

MR. PAVONE: Objection, your Honor.

THE COURT: Sustained.

BY MR. SCELSI:

Q Do you know whether she knew Jerry Brooks?

THE COURT: Sustained. Bring out the facts from which somebody can draw some conclusion.

BY MR. SCELSI:

Q Mary Shepherdson was living in the trailer not far from you, is that correct?

A Yes.

Q And you had been in her trailer on a couple of occasions, right?

A Yes.

Q And when Jerry Brooks was there, isn't that correct?

A Yes, once.

Q And she told you that Jerry Brooks was staying with her for a couple of days, isn't that correct?

MR. PAVONE: Objection.

THE COURT: Sustained. Did she tell you that?

BY MR. SCELSI:

Q Did she tell you that Mary Brooks -- that Jerry

Brooks stayed overnight in the trailer with her a couple of nights?

A No.

Q You are saying no or yes?

THE COURT: Did she tell you? Yes or no?

THE WITNESS: He was there for a while.

THE COURT: Did she tell you this?

THE WITNESS: No.

BY MR. SCELSI:

Q Well, to be truthful --

THE COURT: (Interrupting) No.

BY MR. SCELSI:

Q You have to tell the truth. She told you that, and that is what you told me a week ago, isn't that correct?

A No.

THE COURT: I want to say to the jury that counsel's remarks or statements are not evidence. It is only evidence if the witness agrees to the premise contained in his question.

Following that last one covering isn't that what you told me a week ago, and

the witness said no, and his statement is not evidence, and it is to be disregarded.

We will take a short recess.

(Whereupon, the jury was excused.)

THE CLERK: Court stands in recess for a short time.

(After a short recess the proceedings were resumed before the Court and the jury.)

BY MR. FINER:

Q Miss Buchanan, you said on December 10th, that the man you identified as Jerry Brown came to your apartment?

A Yes.

Q And did you state how long he was there?

A About an hour.

Q And when was that?

A Afternoon.

Q And in the afternoon he was there for an hour?

A Yes.

Q And do you have any idea what time?

A No.

Q Was he there again later in the day?

A Yes.

Q And what time was that?

A Around six.

Q And how long was he there that time?

A A couple of minutes.

Q A couple of minutes. You saw him twice?

A Yes.

Q Do you recall what he was wearing?

A Just a brown leather jacket, that I can recall.

Q A brown leather jacket?

A Yes.

Q And do you recall the length?

A Waist. Longer than the waist.

Q And do you recall if it was buttoned or zippered, or what?

A No.

Q Did he have it zippered at the time or buttoned?

A No, he had it opened.

Q What was he wearing underneath it?

A A suit.

Q A suit?

A Yes.

Q And was he wearing a tie?

A I don't remember.

Q All right. Definitely a suit jacket buttoned?

A No.

Q That was open, also?

A Yes.

Q And was it cold out that day?

A I don't know.

Q Do you recall?

A No.

Q You don't remember. How did he come in the apartment? Did he do anything? Do you have a doorbell?

A No, he knocked.

Q He knocked. Did you let him in?

A Yes.

Q You went to the door?

A Mm-hmm.

Q And did you ask him who he was?

A Well, Tony was with him.

Q Tony was with him at the time?

A That night?

Q That night.

A No, I am sorry.

Q He was alone?

A Yes.

Q Did you ask him who he was?

A No.

Q You knew who he was?

A Yes.

Q Okay. Prior to that, you testified that you had received a telephone call from Mr. Baer?

A Yes.

Q And do you recall what time that was?

A Around five.

Q Around five. Who was present at the time the telephone call was made by Mr. Baer?

A I was just alone.

Q You were there alone?

A Yes.

Q Okay. You said that you recall your testimony before the Grand Jury?

A Yes.

Q Do you recall that you made a statement at that time that Mary came home at six?

A Around there. I don't remember the time.

Q You also said that Mary was there at the time that you received the call from Mr. Baer?

A No.

Q You don't recall saying that to the Grand Jury?

A She wasn't there when Dave called me.

Q And the statement that you made to the Grand Jury wasn't true, is that what you are telling us?

MR. PAVONE: Objection. I don't believe that that says that at all; the Grand

Jury transcript.

THE COURT: You can read it correct later on when it is your time.

BY MR. FINER:

Q Do you recall the question, "Was Mary in the apartment when you received the call, or did she come in a few minutes later?"

A A few minutes later.

Q And you are saying now that she was there a few minutes later. You don't recall whether, at that time, you said she was there?

THE COURT: What was that?

BY MR. SCELSI:

Q She was there?

A She wasn't when Dave called me.

THE COURT: Read the last question and the answer.

BY MR. FINER:

Q The question was, was Mary in the apartment when she received the call or did she come in a few minutes later, and the answers was that she was there. Is that the statement that you made to the Grand Jury?

A If it says that.

Q But that is not what you are telling me now, is

that the fact, or is that not the fact or is that correct?

A When Dave called me?

Q That is correct.

A To tell me that he was beaten up?

Q When you received the call which you just testified to it was around five o'clock from Mr. Baer, and was Mary present is the question, and you answered, "She wasn't there." Now, I am asking you if she was there? Which is the true story?

A She wasn't there. A few minutes later she walked in. She was outside of the apartment.

Q Your memory is better now --

THE COURT: (Interrupting) That is argumentative.

BY MR. FINER:

Q After Mary left with Mr. Brown, what did you do?

A Called Sampson.

Q You called Mr. Sampson?

A Yes.

Q Was he a police officer?

A No.

Q What does he do?

A He was the man that was shot.

Q Does that have something to do with is occupation?

A No.

Q What is his occupation, do you know?

A A carpenter.

Q A carpenter. But you called him after Mary left?

A Yes.

Q And you didn't call any police authorities?

A No. Mary was going with Sampson, and that is why I called him.

Q Did you used to go with Mr. Sampson?

A Yes.

Q And did you live with him upstairs?

A Four years ago.

Q Do you recall when you went to sleep that night of the 10th -- you went to sleep that night, didn't you?

A Yes.

Q And do you recall when?

A About midnight.

Q And between midnight and the time that you called Mr. Sampson, did you make any other phone calls?

A No.

Q And when did you wake up, again?

A The next morning.

Q The next morning. Are you a good friend of Mary's?

A Yes.

MR. FINER: That is all I have,

your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. PAVONE:

Q I have one question here and --

THE COURT: (Interrupting) You should think whether you should ask it or not.

MR. PAVONE: It is a short one.

BY MR. PAVONE:

Q Did you know Jerry Brown before December 10th, 1975?

A Yes.

Q And Jerry Brown, the defendant?

A Oh, no.

Q No, you did not. December 10th was the first day that you met him?

A Yes.

THE COURT: You should have brought that out on direct, and not on redirect. You are excused.

(Whereupon, the witness was excused.)

MR. PAVONE: Call Richard Sampson.

RICHARD SAMPSON,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Mr. Sampson, you are appearing here today pursuant to a subpoena?

A I can't hear you.

THE COURT: What difference does it make?

BY MR. PAVONE:

Q Let me direct your attention to December 10th, 1975. Where were you residing at that time?

A 5 Camden Street.

Q And is that the upstairs apartment?

A Yes, sir.

Q Now, directing your attention to the evening of December 10th, and the morning of December 11th, 1975, were you home at that time?

A Off and on.

Q What time did you return home to stay?

A Sometime around midnight.

Q And were you alone at that time, around midnight?

A Yes.

Q And did there come a time in the evening when you

received a visitor?

A Yes.

Q And can you tell us who, please, arrived at your home that evening?

MR. FINER: Objection, unless we have the full time and place.

THE COURT: Ask him what happened, if anything, and the actual time.

BY MR. PAVONE:

Q Would you please tell us what happened, if anything, as you returned after midnight on that night.

MR. SCELSI: I will object.

THE COURT: Overruled.

BY MR. PAVONE:

Q Go ahead and proceed.

A Okay. I was visited by a Jerry Brooks, and Anthony Cavallaro -- I am sorry, Jerry Brown.

THE COURT: What time?

THE WITNESS: About 1:30 or 2 o'clock in the morning, somewhere around there.

THE COURT: Who was with you?

THE WITNESS: No one was with me.

THE COURT: Just the three of you?

THE WITNESS: Right.

THE COURT: Go ahead.

MR. SCELSI: May I have an offer of proof?

THE COURT: It was overruled, and go ahead.

BY MR. PAVONE:

Q Now, Mr. Sampson, had you met Mr. Brown before that evening?

A No.

Q How about Mr. Cavallaro?

A Yes.

Q And can you -- are the two of them presently in the courtroom?

A I see Tony.

Q Do you see Mr. Brown?

THE COURT: Stand up and take a good look.

THE WITNESS: Yes, there he is but he is a lot thinner, but that is him.

THE COURT: Which one?

THE WITNESS: The fellow with the dark suit on, and the dark tie and the white shirt.

THE COURT: And where is he sitting at the table?

THE WITNESS: The last person

at the table.

THE COURT: Let the record reflect that he has identified Brown and Cavallaro.

MR. PAVONE: Thank you, Your Honor.

BY MR. PAVONE:

Q Now, tell us, Mr. Sampson, when these gentlemen visited you did you see anything -- what did you see, is the question.

A How do you mean, what did I see?

Q Yes.

A Well, Mr. Brown had a gun on me. I saw a gun.

Q And he was pointing this gun at you?

A Yes.

Q And then what did they say?

A Well, it was --

MR. SCELSI: I would object again. This has got nothing to do with Mary Shepherdson.

THE COURT: Overruled. Go ahead. What did they say? What did you say, and not they. I don't imagine that she sang a chorus.

BY MR. PAVONE:

Q What, if anything, did Cavallaro say?

A Tony came in the house and said we would have a talk. This was after Mr. Brown had me in the house, and said we would have a talk, and then we left.

Q And did Mr. Brown say anything in the house?

A Just that he was there for Tony, and that he was there to keep me there until Tony got there, or whatever, something to that effect.

Q And did Tony say what he wanted to talk to you about?

A There was a rip-off. There was a dope rip-off.

Q Is that what Tony said?

A No, that is what I knew.

Q What did Tony say that night, Tony Cavallaro?

A I talked to Tony earlier on the phone and I asked him to come over and explain the story, and explain what had happened so that, you know --

Q (Interrupting) Anyway, what happened next?

A Then, we went to Tony's house.

Q And you left your apartment?

A Right, right, and we went to Tony's house.

MR. SCELSI: I will object to any further testimony after leaving the house.

THE COURT: Overruled.

BY MR. PAVONE:

Q What happened at Tony Cavallaro's house?

A I got shot.

Q By whom?

MR. SCELSI: Objection.

THE COURT: Overruled.

THE WITNESS: By Mr. Brown.

BY MR. PAVONE:

Q Now, did Tony Cavallaro, did he do anything?

A He hit me once, that is all.

Q He hit you?

A Right.

Q And what happened after you got shot?

A Tony got me to the hospital. Tony made this other fellow that I couldn't identify, made the other fellow that I couldn't identify take me to the hospital.

Q And what happened at the hospital? Were the police summoned?

A Yes.

MR. PAVONE: I have no questions.

THE COURT: After you got shot, did you see Mary Shepherdson at any time?

THE WITNESS: No.

THE COURT: Strike the testimony.

I am sorry, strike it.

I assumed that counsel was going to correct it. Strike it.

MR. PAVONE: May I ask a couple of more questions.

BY MR. PAVONE:

Q Just prior to Mr. Brown visiting you the night of December 11th, did you observe anything?

A Just, the only thing I saw was Tony and Mary and Brown go up in front of the house, and Tony and Mary walking to the downstairs apartment.

Q Downstairs?

A Yes, the downstairs apartment.

Q And what time was that?

A One thirty or maybe two o'clock; between there.

MR. PAVONE: Your Honor, I submit that is the testimony.

THE COURT: Unless you can represent to me that you a e going to connect, we are going to strike it.

MR. PAVONE: The evidence?

THE COURT: You haven't connected it so far, and I don't want to argue. Can you connect it later?

MR. PAVONE: No.

THE COURT: Strike it out. You are excused.

MR. SCELSI: Your Honor, may I --

THE COURT: (Interrupting) I have stricken the testimony unless you want to call him as your own witness.

MR. SCELSI: I do.

THE COURT: All right.

(The witness, having been previously sworn, was called by Mr. Scelsi and testified as follows.)

DIRECT EXAMINATION

BY MR. SCELSI:

Q I would like to ask you about Mary Shepherdson --

THE COURT: (Interrupting) I might say to the jury that when we say to strike it, you are to disregard it.

BY MR. SCELSI:

Q During the month of December, and prior thereto, were you living with Mary Shepherdson upstairs?

A Yes, for several years.

Q And did there come a time that you went to Cleveland?

A Right.

Q And was that about December 7th, 1975?

A I would have come back that day. I left on a Friday. I left that December 7th and that was a Sunday.

Q All right. And while you were gone did Mary Shepherdson, what did she do?

A She moved out and moved into a trailer.

Q And did you go to see her on the night of December 7th?

A Right.

Q At the trailer?

A Yes.

Q And that is December 10th, 1975?

MR. PAVONE: I object.

THE COURT: Overruled.

BY MR. SCELSI:

Q Did you have a conversation with her about a drug rip-off?

A I said to her that I knew that she was involved in something, and I said it would have had to be a rip-off because that is all this guy did. Her answer to me was that he has good dope, and I said, "No, this guy doesn't have good dope."

THE COURT: What guy?

THE WITNESS: Jerry Brooks.

BY MR. SCELSI:

Q Let me be more specific. You got on the subject of

Jerry Brooks, is that correct?

A Right.

MR. PAVONE: I object to this line of questioning.

THE COURT: Overruled.

BY MR. SCELSI:

Q And you had a conversation with her, and about the sale of the marijuana or something, to Mr. Cavallaro, isn't that correct?

A I had no idea to whom.

Q And what did -- did they tell you she was involved in the deal at that time?

A Well, I guess -- yes, I would say that we discussed it so when I said -- I knew she was into something, and she said to me, because she had been going with this Jerry Brooks for this last couple of days, that Thursday and Friday, and I had observed them walking across the street from the place that I now was dwelling, and as a matter of fact, that Wednesday or Thursday night I had said to Jerry Brooks that I don't want that chick involved because I knew what he did, of course, and I don't want the chick involved, and so apparently they just went along, anyway.

Q And you saw her in the company of Jerry Brooks,

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then?

A Yes, sir.

Q Before the 5th, is that correct?

A Right.

Q Well, let me ask you this: What did she tell you regardless -- I mean, about any rip-off, or rip-offs?

A As long as they got paid.

Q She didn't care who he ripped off as long as she got paid?

A She said she didn't care about it as long as she got what was coming.

Q You said that you didn't want her getting involved in any rip-off and she said she didn't care as long as she got her money?

A As long as she got what she had coming, something to that effect.

MR. PAVONE: I object.

THE COURT: Overruled.

BY MR. SCELSI:

Q And this was on the night of December what?

A The 7th.

Q Yes, December 7th, 1975, is that correct?

A Yes.

Q And did she admit to you that she had gone to --

THE COURT: (Interrupting)

Sustained.

BY MR. SCELSI:

Q Did you ask her or have a conversation with her as to whether or not she went down to Mr. Baer's apartment on a Friday?

A No, I did not.

THE COURT: That is very leading.

MR. SCELSI: You may examine.

MR. PAVONE: I have no questions.

THE COURT: Did you see her after this shooting incident?

THE WITNESS: Very briefly, in the hospital for about two minutes.

THE COURT: She saw you there?

THE WITNESS: Right.

THE COURT: And did you tell her what happened?

THE WITNESS: She knew.

THE COURT: How do you know that?

THE WITNESS: Because she was in custody.

THE COURT: I see, and did she say anything about what happened to you?

THE WITNESS: No. Why did I get

involved, and I just said, "To save you, and all of that kind of thing," and that is all.

THE COURT: Did she say, "I am sorry you got hurt?"

THE WITNESS: No.

THE COURT: But you knew that she got hurt?

THE WITNESS: Yes.

THE COURT: We will restore that testimony that has been struck.

You are excused.

MR. SCELSI: Your Honor, may I have some more questions?

THE COURT: Yes.

BY MR. SCELSI:

Q She told you this was when, the next day?

A No, this would have been three or four or five day later, maybe on a Wednesday.

THE COURT: What is the date of the time that you were shot?

THE WITNESS: I was shot on a Thursday, I believe.

THE COURT: Thursday what?

THE WITNESS: It would have been, well, the 7th or maybe the 10th or the 11th.

MR. SCELSI: December 11th.

THE COURT: Yes.

BY MR. SCELSI:

Q And you never talked to her until five days later?

A No.

Q And she didn't know anything about the shooting?

A No.

MR. SCELSI: I would renew my motion to strike.

THE COURT: Come up here.

(Whereupon, the following took place at the bench, out of the hearing of the jury.)

MR. SCELSI: It is hearsay.

THE COURT: No, it is not hearsay.

MR. SCELSI: It is inadmissible.

THE COURT: That doesn't make it inadmissible.

What was the date of this? Was it before or after her kidnapping?

MR. PAVONE: Immediately after.

THE COURT: It is not relevant. You should not have put it in, and unless you can connect it and show that this would make her afraid.

MR. PAVONE: Well, the whole events of that day --

THE COURT: (Interrupting) How do you justify putting it in?

MR. PAVONE: It tends to establish the plan and the intent on the part of the defendants too.

THE COURT: (Interrupting) After the event to establish an intent?

MR. PAVONE: Yes, the events prior to, during and immediately after.

THE COURT: In the course of conduct, is that what you mean?

MR. PAVONE: Exactly, and --

THE COURT: (Interrupting) Prior to or subsequent to the events? Well, I think so, we will let it stand, all right. I heard what he said. We are allowing the testimony to stand, all of it. Both the direct and the cross.

MR. FINER: May I state for the record that I think that under -- well, under 403 it -- the relevant and prejudicial should be excluded and I just want to put that on the record.

THE COURT: There is no such a rule. It is always in the discretion of the Court, and it is exceedingly relevant and that far outweighs the prejudicial effect, particularly in light of the fact that that girl's testimony was that she didn't shoot at herself, unless she was at a shooting gallery. The timing of it, it would be relevant. Denied. Beside that, I think that counsel opened the door. That was after I had stricken it, and he went into it. You opened the door. All of the prior relationship, and you went into the situation.

MR. SCELSI: The relationship?

THE COURT: I have ruled on it. I am not here for an appeal.

(Whereupon, the following took place before the Court and the jury.)

MR. PAVONE: I have no further questions of this witness.

THE COURT: Any recross-examination?

MR. SCELSI: One minute, please.

CROSS-EXAMINATION

BY MR. SCELSI:

Q You weren't at the Fitch residence during the 10th, were you?

A No.

Q Or the 11th?

A No.

Q And the weekend before you had gone to Cleveland on the 5th, and back on the 7th?

A Yes.

Q The FBI, when they questioned you, they didn't bother asking you about Mary Shepherdson's relationship --

MR. PAVONE: Objection.

THE COURT: Sustained.

BY MR. SCELSI:

Q Mary came tosee you at the hospital about four or five days later, right?

A Right.

Q And all she did was come and see how you were and left, is that right?

A She was there for ten seconds, or half a minute, maybe.

Q And did she tell you she was being pressured by any law enforcement agency like the FBI?

A No, no.

MR. SCELSI: Just a couple of more

questions.

BY MR. SCELSI:

Q You received a call from Debbie Buchanan that night, didn't you?

A Yes.

THE COURT: What night?

BY MR. SCELSI:

Q The night of December 10th.

A Yes.

THE COURT: All right.

BY MR. SCELSI:

Q And did you receive this call when she advised you that she had received a call from Mr. Baer, that they were coming over -- some people were coming over?

A Well, I don't know. There are four or five or six different conversations with Debbie and I, that night.

Q During the course of the conversation, did you have a conversation with her before Mr. Brown arrived?

A Yes.

MR. PAVONE: Objection.

BY MR. SCELSI:

Q And what did Miss Buchanan tell you?

MR. PAVONE: This is all hearsay.

THE COURT: It doesn't change its character from hearsay. It is hearsay.

MR. SCELSI: It is evidence to contradict --

THE COURT: (Interrupting) For heaven's sakes. We will adjourn now until tomorrow morning.

(Whereupon, the jury was excused.)

THE CLERK: Court stands in recess until ten o'clock tomorrow morning.

(Whereupon at 3:30 p.m., the proceedings were recessed until 10 a.m. the following morning.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against - 76-CR-13

ANTHONY L. CAVALLARO and
GERALD J. BROWN,

Defendants.

Continuation of Proceedings in the above-entitled matter, July 13, 1976, Federal Building, Auburn, New York, before the Honorable Lloyd F. MacMahon, United States District Judge, sitting by designation.

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A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, JR., United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, By: JOSEPH PAVONE, Assistant United States Attorney, of Counsel.

JOEL A. SCELSI, ESQ., P.O. Box 479, 2609 E. Main Street, Endicott, New York, 13760, Counsel for Defendant Cavallaro.

STUART E. FINER, ESQ., Greenwyn Building, 4 Hobart Street, Utica, New York, 13501, Counsel for Defendant Brown.

(Whereupon, the following proceedings took place before the Court, without the presence of the jury.)

THE COURT: I have your requests to charge. Do you withdraw the earlier ones that you had in writing, and which set do you want me to act on? These seem to be pretty much a repetition of what you had. I have given my ruling in the margin, and they are that I will give, in substance your No. 1.

I deny No. 2 in the form in which you ask it. Particularly this business, "or any other person." This is not like the Sinatra, Jr. case to which you rely.

I will charge that the victim -- if you find that she voluntarily consented to be taken for a ride, or if the ride was prearranged by her, or any other person, without the knowledge or complicity of the defendants, then they must find the defendant not guilty, and that is what I will charge.

I will charge that the victim's consent may be specialized or impliedly given, and may be evidenced by all of the circumstances, and not by actions or reactions. That doesn't

mean anything.

As to Request No. 3: That is not the law. I refuse to do it. See United States vs. Holland, and I don't have the citation. It is in the Supreme Court.

So I deny or decline No. 3, obviously.

MR. SCELSI: May we reserve our exceptions for later?

THE COURT: You don't need to take exceptions. The rule automatically gives them to you, Mr. Scelsi.

MR. SCELSI: Thank you.

THE COURT: Bring in the jury.

(Whereupon, the following proceedings took place before the Court and the jury.)

THE COURT: Good morning; proceed.

R I C H A R D S A M P S O N,

having been previously sworn, was examined and testified further as follows:

MR. PAVONE: I believe the witness is under cross-examination?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. FINER:

Q I have just a couple of questions. Are you working at the present time?

A I can't hear you.

Q Are you working at the present time?

A Yes.

Q And how are you employed?

A With a roofing and siding company.

Q And you stated yesterday that four or five days after the 10th of December that you were in the hospital?

A Yes.

Q And at that time Mary Shepherdson visited you?

A Yes.

Q And can you tell us the substance of that conversation?

MR. PAVONE: Objection, your Honor.

THE COURT: Read it back.

(The previous question was read by the reporter.)

THE COURT: At what time?

THE WITNESS: I lost the time.

MR. FINER: At the time he was

in the hospital for four or five days after December 10th.

THE COURT: Overruled.

BY MR. FINER:

Q Go ahead.

A She walked in the hospital and sat down on the bed, and gave me a kiss, and said, "Why did I get involved," and that she had everything and I said to her, "I got you out of it." And she said, "I had everything under control," and she looked at me and turned and walked out of the room.

MR. FINER: That is all I have.

MR. PAVONE: I have no more questions.

(Whereupon, the witness was excused.)

MR. PAVONE: Call David L. Baer.

D A V I D L. B A E R,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Mr. Baer, would you please state your name and address.

A David L. Baer, 312 South Liberty Street in Endicott, New York.

Q Now, Mr. Baer, I would like to direct your attention to December 10th, 1975. Where were you living at that time?

A 312 South Liberty, Endicott, New York.

Q And are you acquainted with the defendant here in this case, Mr. Anthony Cavallaro?

A Yes, I know him.

Q And is Mr. Cavallaro a friend of yours?

A Well, yes. In a way.

Q Now, Mr. Baer, on the 9th, the night of December 9th or 10th, 1975, were you paid a visit by Mr. Cavallaro?

A I can't recall dates too well. That was -- yes, I was.

Q About what time did he pay you that visit?

A I can't remember which -- I can't remember exactly what time.

Q Was he alone?

A No, he wasn't.

Q Who was with him?

A Gerald Brown.

Q And did you know the gentleman as Gerald Brown at that time?

A No, I didn't.

Q Did you subsequently learn his identity?

A Yes, I did.

Q And do you see Mr. Brown in the courtroom today? Take your time and look around.

THE COURT: Stand up, so that you can see.

THE WITNESS: No, sir, I don't.

BY MR. PAVONE:

Q You don't see him? But you did, later, learn the identification of the man as Gerald Brown? Would you describe him, please.

A Tall, heavy, like a football player.

Q And what color hair did he have, do you recall?

A Blonde -- no, I really can't. Blonde, something like that. I only saw him briefly.

Q Any other distinguishing features?

A Well-dressed.

Q And he was well-dressed? Do you recall what he had on that day?

A A brown leather jacket.

Q Now, tell me what was the purpose of the visit by this gentleman.

MR. FINER: I object to the form of the question.

THE COURT: Sustained.

BY MR. PAVONE:

Q Let me ask you this, Mr. Baer: When Mr. Cavallaro and this other gentleman, which you say was Mr. Brown, came to visit you, what did they say?

MR. SCELSI: I will object, your Honor.

THE COURT: Yes, it is in the plural. What did who say? Identify the speaker. They don't sing in a chorus, as I told you yesterday.

MR. PAVONE: I beg your pardon, your Honor.

BY MR. PAVONE:

Q What did Mr. Cavallaro say?

A Mr. Cavallaro didn't say very much at all. He wasn't the one speaking.

Q What did the other gentleman say, Mr. Brown?

A He wanted to know the whereabouts of two people, a Mr. Gerald Brooks, and David LaMont.

Q Did he say anything else?

A No, sir.

Q What happened next? Did they leave, or did you go with them, or did you go somewhere with them?

A I believe that after they left they came back later.

I am not too sure, but I believe that that was the way it was.

Q They came back later?

A I believe so, because they wanted to talk with my girlfriend, Mary Shepherdson.

Q And do you recall what time that was?

A No, I don't, sir.

MR. SCELSI: I would like to know more about these times.

THE COURT: Yes, fix the times.

BY MR. PAVONE:

Q Yes. Do you recall what time it was?

A I would say it would be in the afternoon. That is probably close.

Q When was that, the first time that they came in?

A I believe that that would be the second time that they came in, just before we went down to Debbie Buchanan's house.

Q And how about in the evening; did you see the gentleman again in the evening?

A Well, I believe that you are talking about the time that they wanted to talk to Mary, and they called me up on the telephone?

Q Yes. That is exactly the time that I am referring to. Do you recall that now, do you?

A Yes, sir. I do.

Q And about what time was that?

A I would have to say it was about 9 p.m.

Q Nine p.m.?

A Nine or ten.

Q And what happened when they visited you at that time?

A Well, they didn't really visit me. They called me up on the phone and told me that they wanted to talk to Mary because they had talked to Mary prior, and Mary was getting some information together for them as to the whereabouts of Jerry Brooks, and how to get there, and she was expecting them to come anyway, and they called me up and said that they wanted to go down and they wanted me to be there since Mary was my girlfriend. So I called up Mary, and I told her we were coming down, and she was expecting them, again and she had the information together --

Q (Interrupting) Excuse me. Okay, Mr. Baer, but did you go with these gentlemen?

A Yes, I did. They came down and picked me up.

Q And then where did you go? You got in the car with them?

A Yes.

Q And where did you go?

A We went to Debbie's house to pick up Mary.

Q And did they pick up Mary at that time?

A Yes, they did.

Q And then what happened?

A Jerry went in and got her. They were in for about three or five minutes. Then they came out, and she got in the front seat and Jerry got in the back seat, and we just started driving.

Q Who was driving?

A Tony Cavallaro was driving.

Q Where were you sitting?

A I was just sitting in the back seat directly behind Tony, and Mary was on Tony's right, and Jerry was on my right.

Q Now, during that car ride, did Tony Cavallaro say anything?

A He didn't say very much. He wasn't the person really talking.

Q Did Gerald Brown say anything?

A Yes. He wanted to know if Mary had anything to do with the alleged rip-off, or whatever happened.

Q Jerry Brown was directing the inquiries to Mary Shepherdson?

A Right.

Q And did there come a time when the car stopped?

A Yes.

Q Do you recall where it was when the car stopped?

A No, I didn't know the area at all. They were just riding.

Q What happened when the car stopped?

A We got out of the car and, and a -- and me and -- well, I had to go to the bathroom, and Tony did, and I guess they were kind of, you know, they were riding Mary a little bit, or Jerry was riding Mary a little bit --

THE COURT: (Interrupting) What was he doing?

THE WITNESS: He was riding her a little bit.

THE COURT: What do you mean by riding her? What did he say?

THE WITNESS: He wanted to know if she had anything to do with the alleged rip-off.

THE COURT: Is that the way he said it? "Did you have anything to do with the alleged rip-off?" Tell us what he said.

THE WITNESS: Yes, he came right out and said that.

THE COURT: Alleged?

THE WITNESS: Not alleged.

THE COURT: I didn't think so. Tell us what he said.

THE WITNESS: He wanted to know did she have anything to do with the rip-off that occurred -- which was a couple of days before, or something like that.

THE COURT: And what did she say?

THE WITNESS: She was saying nothing, she didn't.

THE COURT: And did she say anything whether she knew anything about it? What did they say? You see, we weren't there, and we are trying to find out what happened, and you have to tell us as best you can remember what was said about being involved.

THE WITNESS: That is exactly what I am trying to do.

THE COURT: Try harder.

THE WITNESS: Mm-hmm. All Mary was really saying was that they didn't -- she didn't know anything about it, even though she was one of the people that they went through the channels to get to Tony. She

said she didn't know anything about the rip-off, and Jerry Brown was trying to find out if she was -- if she was telling the truth a little bit.

THE COURT: What did he say, and what did he do to try and find out if she was telling the truth?

THE WITNESS: He just kept asking her over and over if she had anything to do with it.

THE COURT: And what was his tone of voice?

THE WITNESS: He was trying to sound angry.

BY MR. PAVONE:

Q Now, Mr. Baer, when the car stopped, what happened? Did everybody get out of the car?

A Yes, everybody got out of the car. I had to go to the bathroom, and Tony did, and I told Tony to more or less lay off her, and put some pressure on me, and when we -- I told him to have -- to have a -- to have Gerald Brown, you know, shoot some random shots in the air, and so Jerry Brown told us both to stand up against the side wall, and it was just a role that he was putting on, and he

fired some random shots, and Tony said, "Okay," you know, "that is enough. Let's get back in the car."

We got back in the car, and everything was settled.

Q Just a second. When Brown fired the random shots, was he directing them at anything?

A No, he wasn't. If he was --

Q (Interrupting) Was he saying anything to you at that time?

A No, he wasn't.

Q And was he saying anything to Mary Shepherdson at that time?

A No, he wasn't.

Q Just shooting his gun off in the air?

A Yes, he was, because I told him to put some pressure on me.

THE COURT: Put pressure on you?

THE WITNESS: Right. To find out if Mary knew anything, because, well, Mary was my girlfriend, and, and -- he had assumed that Mary didn't know anything about it, but what she said, and just some fingering up --

THE COURT: (Interrupting) You figured she would crack if they put any pressure on you, was that it?

THE WITNESS: Well, crack? Is that the term that you want to use? Yes.

THE COURT: And that she would tell whatever she knew?

THE WITNESS: Right. And she didn't know anything, so he just got back in the car, and everything was settled, and we went to some bar and drank, and there was no more discussion of it.

MR. PAVONE: I would like to have this exhibit marked as Government Exhibit No. 1 for identification, please.

THE CLERK: Government Exhibit No. 1, marked for identification.

(Document marked Government Exhibit No. 1 for identification.)

THE COURT: I take it that Mary wasn't in on this little game of pretending to shoot you and put pressure on you?

THE WITNESS: She wasn't in on it? You mean she didn't know?

THE COURT: Yes.

THE WITNESS: This was just all -- no, no.

THE COURT: It was all staged?

THE WITNESS: Right.

MR. SCELSI: May I have a voir dire on this?

THE COURT: It isn't offered in evidence.

MR. PAVONE: I am about to hand it to the witness.

MR. SCELSI: You have not offered it, yet?

MR. PAVONE: No, I haven't. I'm about to question the witness about the document.

BY MR. PAVONE:

Q I hand you what has been marked as Government Exhibit 1 for identification, and ask you if you can recognize it (offering)?

A Yes, sir.

Q Pardon me?

A What was your question, now?

Q Do you recognize that document?

A Oh, yes.

Q And are you the author of that document? Did you draw that sketch?

A Well, it is pretty crude, and I imagine I could have, yes.

Q Do you recognize it?

A Yes.

THE COURT: Is that your handwriting?

THE WITNESS: This handwriting? No, it is not my handwriting.

THE COURT: In the sketch?

THE WITNESS: That could be.

THE COURT: Well, is it?

THE WITNESS: There isn't any handwriting in the sketch, sir. It is a sketch.

THE COURT: Did you draw it?

THE WITNESS: I probably did draw it because I am not the only person who knew --

THE COURT: (Interrupting) Don't you remember whether you did or not? This was only a year ago?

THE WITNESS: No, sir, I don't remember whether I did or not. But I could have.

THE COURT: You don't recognize the document, is that what you are saying, Mr. Baer?

THE WITNESS: No, I don't exactly

recognize this exact thing.

MR. PAVONE: I have no further questions, your Honor.

MR. SCELSI: Pardon me?

MR. PAVONE: I have no further questions.

MR. SCELSI: I would just like to have a chance to read through these, and it will take ten minutes.

THE COURT: Are they extensive?

MR. SCELSI: Yes, they are.

THE COURT: We will have to adjourn while counsel reads the material, before he conducts his examination. We will take a recess.

(Whereupon, the jury was excused.)

THE CLERK: Court stands for a short recess.

(Whereupon, after a short recess, the proceedings were resumed before the Court and the jury.)

CROSS-EXAMINATION

BY MR. FINER:

Q Mr. Baer, do you recall meeting around December 5th?

MR. PAVONE: Objection. It is

outside of the scope of the direct examination.

THE COURT: I don't know what he is leading to. Please put a leading question, and then I can tell. That is why you have a right to lead on cross-examination. The Judge has to have some idea of what is coming.

MR. FINER: Well, I have not finished my question.

THE COURT: Well, it wasn't leading.

BY MR. FINER:

Q On December 5th, did you and Mary Shepherdson and a man named Jerry Brooks, and Dave LaMont get together to discuss a drug meeting?

MR. PAVONE: Objection.

THE COURT: Overruled.

BY MR. FINER:

Q Do you recall?

A I don't quite recall. I know we got together before -- before everything happened, but I can't recall any dates or where you mean.

Q Prior to the information that you previously testified to with regard to the car ride, do you recall that Mary Shepherdson brought Jerry LaMont

and Dave -- no, Jerry Brooks and Dave LaMont to meet with you at your apartment?

A Right.

Q Do you know what the relationship was between Jerry Brooks and Mary Shepherdson?

MR. PAVONE: Objection.

THE COURT: Overruled.

THE WITNESS: I didn't know what the relationship was. I know that Mary had brought them, and they talked about something on the drug deal.

BY MR. FINER:

Q Did you know that Mary Shepherdson and Jerry had planned to go to Colorado?

A Yes, I did. I didn't know at that time. But I found out -- but I did know after she told me.

Q When did she tell you that, do you recall?

A She told me that --

MR. PAVONE: Objection.

THE COURT: Overruled.

THE WITNESS: She told me that, but I can't remember when she did tell me, or something. She told myself, and she told my cousin, Debbie, I believe --

BY MR. FINER:

Q (Interrupting) That she was going to Colorado with Jerry Brooks, right?

A Right. Well, she was thinking of it. She didn't say she was.

Q On December 10th, you testified that you called Debbie Buchanan's apartment?

A Yes, sir.

Q And you called her and you said it was around nine o'clock?

A Okay. I know when you mean, yes, sir.

Q And did you talk, at that time, did you talk to Mary Shepherdson?

A Yes, I did.

Q And did you tell her that you were coming over to talk to her about the drug deal and the information regarding Jerry Brooks?

A That is when I told her -- I didn't tell her we were coming over. I told her that we were coming over to pick her up because we had been -- we had been hanging around the apartment all day, and didn't want to make a big scene. Okay. Did you -- were you in the car at the time when Mary Shepherdson was escorted out of the apartment with Jerry Brown, is that right?

A Yes, I was.

Q And did you obse ve any force that Mr. Brown was using against Mary Shepherdson?

A No, I didn't.

THE COURT: You say that you were in the apartment?

THE WITNESS: No, sir, I was in the car.

THE COURT: You were in the car?

THE WITNESS: Yes, sir.

THE COURT: And it was dark, wasn't it?

THE WITNESS: Yes, but it was all lit up there. It was in the parking lot.

THE COURT: You couldn't see what was going on inside the house?

THE WITNESS: No.

THE COURT: And what was said inside some house?

THE WITNESS: No, sir.

THE COURT: Who went in the house?

THE WITNESS: Jerry Brown did.

THE COURT: And ho long was he there?

THE WITNESS: Three or five

minutes, or something like that.

BY MR. FINER:

Q Didn't Mr. Brown open the car door for Mary Shepherdson?

A Yes, he did.

Q And did he push her into the car?

A No, he didn't. As a matter of fact, he opened his own door and got in after she got in her side.

Q She got in after he did?

A No, before he did.

Q At any time during that car ride did Jerry Brown hold Mary Shepherdson's hands behind the car seat?

A No, sir, he did not.

Q Did he hold her hands in any position?

A Not that I can recall.

Q You said that you observed Jerry Brown when he escorted Mary Shepherdson from the apartment and into the car?

A I observed -- I observed it from right when they walked out the door. But when they crossing the street, that is when I noticed that they were coming.

Q And did you observe whether or not his coat was opened or buttoned?

A No, sir, I didn't.

Q Do you recall how long a period of time you were in

the bar, that you testified to?

A I would say that at least an hour or an hour and a half.

Q You are sitting there having drinks?

A Right, because -- because, let's see: When we left the bar it was too late to buy -- to buy beer in New York State. So I remember we got some there.

THE COURT: Where was the bar, do you know?

THE WITNESS: I don't know the exact location.

THE COURT: You were able to buy drinks, then, when you couldn't get them in New York?

THE WITNESS: That means it was past four o'clock.

THE COURT: What does it mean? Where were you located, in Pennsylvania?

THE WITNESS: Yes, we were in Pennsylvania.

MR. SCELSI: I have just one more question -- two or three questions.

BY MR. SCELSI:

Q The afternoon of this particular day, was Mary Shepherdson at Debbie Buchanan's apartment?

A This particular day? Are you talking about the 10th?

Q Yes, in the afternoon?

A She was, off and on, yes.

Q And was she there while Mr. Cavallaro and Mr. Brown were there?

A Yes, she was.

Q And there came a time when Mr. Cavallaro and Mr. Brown went to the Zodiac, is that correct?

A You are talking about that time? I thought that you were talking about --

Q (Interrupting) In the afternoon of December 10th at the Zodiac Bar, down the street?

A Yes, down the street. That is when we left to go to the Zodiac and drink for a while.

Q And isn't it true that when Mary Shepherdson came back to the Welfare office, you talked to her, and she said she would get Mr. Brooks' address, because she wanted to --

A (Interrupting) That's right.

Q Because they wanted to cooperate, is that right?

A Yes, sir.

Q And isn't that what she said?

A Yes, sir.

Q And I am referring to the Grand Jury minutes. Now, I will read you a portion.

"What happened next? They took off for the Zodiac," and you are referring to Brown and Cavallaro, is that correct?

A Yes, sir. Well, I went with them, too, sir.

Q Pardon?

A I went with them to the Zodiac, also. Just that I came back.

Q All right. You went to the Zodiac, and they didn't want to take Debbie out again, and you came back and Mary was getting back from Welfare, and she decided to cooperate, is that correct?

A She was cooperative all along.

Q She was cooperative all along?

A Yes, sir.

THE COURT: What do you mean that she did what the defendant asked her to do, is that what you mean?

THE WITNESS: No, she was -- she was willing right from the start --

THE COURT: (Interrupting) I didn't ask you about her state of mind. What did you observe her do that led you to the conclusion that she was cooperating?

THE WITNESS: She called up Jerry Brooks' wife and told her that she

wanted to come up, so could she get the correct address to get there.

THE COURT: Well, you mean she was cooperating in trying to get this information that she wanted, is that what you mean?

THE WITNESS: Yes, sir.

BY MR. SCELSI:

Q Well, during the day, when you saw her, did she at any time appear to be frightened or anything?

A No, sir.

Q She had known Cavallaro for a long period of time, isn't that correct?

A About a year, sir.

Q And isn't it true that when you were going with Mary Shepherdson that you used to take Mary Shepherdson's baby up to Mrs. Cavallaro to babysit?

A Yes, sir.

And she knew Mr. Cavallaro for a period of time, didn't she?

A Yes, sir.

THE COURT: Who fired the shots into the air?

THE WITNESS: Mr. Brown did.

THE COURT: Where did he get the gun?

THE WITNESS: I have no idea, sir. He had it.

THE COURT: Where did he get it? Did you see where he took it from?

THE WITNESS: Probably under his coat.

THE COURT: Did you see him reach for it, under his coat?

THE WITNESS: No, sir, I didn't.

THE COURT: How many shots were fired?

THE WITNESS: Three, sir.

THE COURT: Do you have any redirect?

MR. PAVONE: Yes, your Honor. Just a couple.

REDIRECT EXAMINATION

BY MR. PAVONE:

Q Mr Baer, who is Jerry Brooks, and this fellow, LaMont, that you mentioned on cross-examination?

A Who are they?

Q Yes.

A They were friends of Mary's. That is all I know.

Q Did you introduce them to Tony Cavallaro?

A Yes, I did.

Q Now, you say Mary cooperated. Did she supply this address to Tony Cavallaro and Jerry Brown?

A No, sir, she supplied it to Jerry Brown.

Q That is before the car ride?

A That was during the car ride.

Q And they chose to keep going on the car ride, isn't that correct?

A Tony didn't know -- Tony Cavallaro didn't know that she had submitted that. The car ride was just primarily to talk.

Q Just answer the question, please, Mr. Baer.

A Yes, sir.

Q Now, you stated on cross-examination that Mary was never frightened?

A During the daytime, sir?

Q Well, how about at night, during the car ride?

A During the car ride, she was a little bit frightened.

Q A little bit?

A Yes, sir.

Q And didn't you state to the FBI that she was hysterical during the car ride?

A She was frightened.

THE COURT: Did you tell the FBI that she was hysterical?

THE WITNESS: I could have, yes, sir.

THE COURT: You could have? Did you, or didn't you?

THE WITNESS: I don't know. It all depends on how I worded it at that time.

THE COURT: Do you have the statement?

MR. PAVONE: Yes, I do. I would like to hand it to the witness, and perhaps he can refresh his memory.

MR. SCELSI: I don't know what this is.

THE COURT: Go ahead, proceed.

MR. PAVONE: May I have that marked as an exhibit?

THE CLERK: Government's Exhibit 2, marked for identification.

(Document marked Government's Exhibit 2 for identification.)

BY MR. PAVONE:

Q Mr. Baer, I hand you what has been marked as Government Exhibit No. 2 for identification, and I ask you if you would please read the bottom paragraph to yourself --

MR. SCELSI: (Interrupting) I don't think that there is sufficient foundation --

THE COURT: (Interrupting) Overruled.

BY MR. PAVONE:

Q On the bottom of the page --

MR. SCELSI: (Interrupting) What page is that?

MR. PAVONE: This is Mr. Baer's statement to the FBI, dated 12/18/75, and page 3. It is marked page 25 at the bottom, and page 3 at the top.

THE COURT: Did you tell the FBI that she was hysterical, or not?

THE WITNESS: I will say yes.

THE COURT: All right, next question.

MR. PAVONE: I have no more questions, your Honor.

THE COURT: You are excused.

(Whereupon, the witness was excused.)

MR. PAVONE: Your Honor, I will call Richard Worst.

RICHARD WORST,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAVONE:

Q Mr. Worst, would you please tell the jury what your occupation is.

A I am a Special Agent with the FBI.

Q And how long have you been so employed?

A Seven years.

Q Now, Mr. Worst, are you the case --

THE COURT: (Interrupting) Mr. Pavone, could you keep your voice up a little? Instead of standing back there mumbling, because I can hardly hear you.

MR. PAVONE: I am terribly sorry.

B MR. PAVONE:

Q Are you the case agent who was assigned to investigate this matter before the Court today?

A I was.

Q And what was the investigation predicated upon, please?

MR. SCELSI: I didn't hear the question.

THE COURT: I didn't hear it

either.

BY MR. PAVONE:

Q What was the investigation predicated upon?

A I was notified by the Broome County Sheriff's Department that --

MR. SCELSI: (Interrupting) I will object. This is all hearsay.

THE COURT: Sustained.

Did you have a communication with the Broome County Sheriff's Department?

THE WITNESS: I did.

THE COURT: When?

THE WITNESS: On or about the 18th of December.

THE COURT: And what did you do after that?

THE WITNESS: We went over and interviewed the witnesses.

THE COURT: And who did you interview?

THE WITNESS: We interviewed Mary Shepherdson, Debbie Buchanan, Dick Fitch, and subsequently we interviewed David Baer.

THE COURT: Where?

THE WITNESS: We interviewed

Fitch and Mary Shepherdson and Debbie Buchanan at the Broome County Sheriff's Department. Then we interviewed David Baer at the residency of the FBI in Binghamton.

THE COURT: When?

THE WITNESS: I believe that David Baer was interviewed on the 18th of December, and I think the other interviews took place around the 15th or 16th. I am not exactly sure.

THE COURT: All right.

BY MR. PAVONE:

Q I hand you what has been marked as Government Exhibit No. 1 for identification and ask you if you recognize that (offering)?

A I do.

Q And did you draw that exhibit?

A No, I did not.

THE COURT: Who drew that exhibit?

BY MR. PAVONE:

Q Who drew it?

A David Baer drew the exhibit, and in Pennsylvania, and the pen notations were done by then Special Agent Robert Kennedy, who has subsequently retired.

Q When did David Baer draw that diagram?

A I believe it was the date of the interview and that was the 18th.

THE COURT: Where did you get the information or the legend on the writing in this exhibit?

THE WITNESS: Excuse me, I didn't understand you.

THE COURT: Who gave you the information, other than just the lines? Who gave you the name, for example, that appear on those lines?

THE WITNESS: David Baer.

THE COURT: And you made that statement which appears at the bottom?

THE WITNESS: It was written by Special Agent Kennedy, and witnessed by myself.

THE COURT: But who gave you the information?

THE WITNESS: David Baer.

MR. PAVONE: I move the admission into evidence of the sketch.

MR. SCELSI: Wait a minute.

THE COURT: You offer it and show it to him, and then offer it in evidence.

MR. PAVONE: I have already supplied defense counsel with a copy. I will be glad to show him the original (offering to counsel).

MR. SCELSI: May I have a voir dire?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. SCELSI:

Q There are pencil marks, and part is in pencil, and part is in pen, is that correct?

A That is correct, sir.

Q So it was you that put in the arrows, you or Mr. Kennedy put in the arrows, in with a ruler?

A Mr. Kennedy.

Q And Mr. Baer didn't do that?

A Mr. Baer showed, by the letters inside the circles, who was standing where.

Q But essentially the FBI made that exhibit?

A That is incorrect.

Q Well, it is your writing or Mr. Kennedy's on the top, isn't it?

A All we did was identify the people and just say alphabetically the letter, and it was put in.

THE COURT You didn't identify

them, did you?

THE WITNESS: No.

THE COURT: Who identified them?

THE WITNESS: David Baer.

BY MR. SCELSI:

Q I am asking you who did the writing on there? Whose penmanship is all of this?

A That is Mr. Kennedy's.

Q Okay. Then it was Mr. Baer that wrote this, wasn't it?

A If you are talking about the paragraph at the top, no, that was not Mr. Baer.

Q It was put in after -- I will withdraw that.

MR. SCELSI: That is all.

BY MR. PAVONE:

Q Who put the pencil notations on the exhibit?

A Mr. Baer.

MR. PAVONE: I offer the exhibit in evidence, your Honor.

MR. SCELSI: Well, I have no objection to it, as to the part that Mr. Baer put on there.

THE COURT: Overruled. Proceed.

THE CLERK: Government's Exhibit No. 1 received in evidence.

(Government's Exhibit No. 1 for identification, received in evidence.)

BY MR. PAVONE:

Q Now, would you please explain to the jury what the exhibit depicts, and what Mr. Baer told you --

THE COURT: (Interrupting) Sustained. The exhibit speaks for itself. It is in evidence, and show it to him, if you want to.

Show it to the jury.

(The exhibit was offered to the members of the jury, by counsel.)

BY MR. PAVONE:

Q Now, Mr. Worst, did you know a Peggy Russell?

A I know of her, yes, sir.

Q Tell me, did you ever tell Peggy Russell that Mary Shepherdson had been arrested for drugs, and that she got excited over drug deals?

A No, I did not.

THE COURT: Did you make any search to determine whether Mary Shepherdson has any criminal record of any kind?

THE WITNESS: Yes, we did.

THE COURT: And what did you find?

THE WITNESS: We could not find

an arrest record for Mary Shepherdson.

THE COURT: Did you find any convictions?

THE WITNESS: No, sir.

THE COURT: Where did you look?

THE WITNESS: We checked the FBI computers, New York State Police, Broome County Sheriff's Department, and the Binghamton Police Department.

MR. PAVONE: I have no more questions.

CROSS-EXAMINATION

BY MR. SCELSI:

Q Did you check out the name of Mary Wilkinson?

A No, I did not.

Q So that, in other words, you checked the name Mary Shepherdson for arrests, but not the name of Mary Wilkinson, is that right?

A That is correct.

Q Did you ever see this before (offering)?

A No, I have not.

Q And you don't know Peggy Russell?

A I talked to her once on the phone.

Q And did she advise you about Mary Shepherdson's excitement of drug dealings?

A No, she did not.

Q Did you talk to her about Mary Shepherdson's drug dealings?

A I had a key to her apartment, and when I attempted to return it to her, I stopped over to her place, and she was not there. I got in touch with her by phone --

THE COURT: (Interrupting) Answer the question. Nobody asked you about a key to her apartment.

BY MR. SCELSI:

Q Mary told you that she used drugs on occasions, didn't she, when you interviewed her? She told you that, didn't she?

A I think that she said she used pot.

Q Did she tell you that she had used cocaine, on occasions?

A Never, no, sir.

Q She didn't tell you that? And in your report you said that Tony told Brown to cool it, after the shots were fired, and Mary was in a state of hysteria, and this is your report, right?

MR. PAVONE: Objection.

THE COURT: Sustained. Put a question to him. You can use the report to

show that, at some time or other, he made an inconsistent statement. That is the only thing.

BY MR. SCELSI:

Q When did Mary -- were you told at any time by anyone that Mary Brown -- I mean Mary Shepherdson was in a state of hysteria, on the evening of December 10th?

THE COURT: During the ride?

BY MR. SCELSI:

Q Or after the ride.

A I was told by Mr. Baer, and Miss Shepherdson.

Q And this was after the shots were fired that she was in the state of hysteria, is that correct?

A For that particular incident, yes.

Q Whose selection of words would the hysteria have been? Was that your selection of words?

A That was not my selection of words.

Q Well, this report is all written by you, isn't that correct?

A Yes, sir, from notes.

Q And after the individuals were interviewed you sat down and wrote up a report from your notes, isn't that correct?

A That is correct.

Q And the only mention of hysteria in this report --

THE COURT: (Interrupting) I

think that the witness, himself, testified that that is what he told the FBI, or am I wrong in my recollection?

MR. SCELSI: I am only interested as to when the state of hysteria --

THE COURT: (Interrupting) Then your question isn't clear. When did he say she was hysterical?

BY MR. SCELSI:

Q Do you recall when you stated that you were told that Mary Shepherdson was hysterical?

A I am sorry, I don't understand the question.

Q Would you read this one statement to the jury (offering), and it is underlined?

A "After the shots were fired, Mary was in a state of hysteria."

Q That is when she was in the state of hysteria?

THE COURT: That is when you were told that she was in a state of hysteria. He wasn't there, Mr. Scelsi.

BY MR. SCELSI:

Q You were supposedly told that she was in a state of hysteria?

A That is correct.

MR. SCELSI: That is all.

THE COURT: You are excused.

(Whereupon, the witness was excused.)

MR. PAVONE: The United States rests.

THE COURT: The jury may take a short recess.

(Whereupon, the jury was excused, and the following took place before the Court.)

THE COURT: All right, make your motion .

MR. SCELSI: I would like to make a motion at this time for a judgment of acquittal with respect to the defendant Cavallaro, and inasmuch as the evidence there is or has a substantial amount of reasonable doubt in this particular matter, and with respect to Mr. Cavallaco there is conflicting testimony by a number of witnesses for the people, and Mary Shepherdson --

THE COURT: (Interrupting) You should move on the grounds that the government has failed to make a prima facie case.

MR. SCELSI: That is right.

THE COURT: Guilt beyond a

reasonable doubt, and is that your motion?

MR. SCELSI: Yes, your Honor.

THE COURT: Denied.

MR. SCELSI: I would like to reserve my rights to make any motions.

THE COURT: Those are your motions. You can't reserve. This is the time to make them. Do you have any others? If so, I will hear them now.

MR. SCELSI: No.

MR. FINER: On behalf of the defendant Gerald Brown, I make a motion for a judgment of acquittal due to the fact that the government has failed to prove a prima facie case beyond a reasonable doubt.

THE COURT: Denied.

MR. FINER: I would like to move for a dismissal, based on the fact that the Grand Jury testimony, which was received this morning with regard to David Baer, was riddled with exculpatory evidence which was not shown to us, except for the statement that she got in the car voluntarily.

THE COURT: Did you see the Grand Jury testimony this morning?

MR. FINER: Yes, I did.

THE COURT: Well, you could have used it for any purpose you wished, or asked for an adjournment, if you needed one. You are not saying here, are you, that you did not have access to this Grand Jury testimony during the trial?

MR. FINER: No, I was only saying that I asked for the evidence pre-trial, and after arraignment, and the pre-trial discovery proceedings and it was not offered to me until this morning.

THE COURT: What about that?

MR. PAVONE: I provided both Mr. Finer and Mr. Scelsi with the information that I thought perhaps might be exculpatory, and that was the fact that Mr. Baer --

THE COURT: (Interrupting) I can't hear you. I just can't understand you. I can hear you, but I can't understand what you are saying. Would you quit mumbling.

MR. PAVONE: I did provide Mr. Finer and Mr. Scelsi with information that Mr. Baer had and may be exculpatory.

THE COURT: Did you supply them

with the Grand Jury minutes?

MR. PAVONE: Not until this morning.

THE COURT: Did you give them any of the contents of the Grand Jury minutes?

MR. PAVONE: Yes, I advised both of them that Mr. Baer had stated that Mary Shepherdson had gone with the defendants willingly.

THE COURT: When did you tell them that?

MR. PAVONE: Your Honor, sometime in May, I believe. I have the precise date.

THE COURT: Do you have it in writing, to that effect?

MR. PAVONE: Yes, sir, your Honor.

THE COURT: What is in these minutes?

MR. FINER: May 11th.

THE COURT: You concede that?

MR. FINER: Yes.

THE COURT: What do you say was exculpatory that he did not furnish you? It is the perfect place to commit a crime, is in this direct.

MR. FINER: Well, it would take some time to give a specific --

THE COURT: (Interrupting) I need to know it. You have just made this motion, Mr. Finer, and show me.

What am I supposed to do, act on an assumption of some kind?

MR. FINER: In the statements Mr. Baer states that he knew that they were joking around all of the time, and this was all staged and --

THE COURT: (Interrupting) That he knew it? He didn't say that she knew it.

MR. SCELSI: On page 31, that Mary was getting back to the Welfare office and that she had decided to cooperate with the defendants. She had never advised us of this.

THE COURT: He said that she cooperated, not that she had decided to cooperate.

MR. SCELSI: In the Grand Jury minutes it said that she had decided to, and they did not provide us with that exculpatory --

THE COURT: (Interrupting) I

think, in view of the fact that you have had all of this for use on cross examination of the defendant Baer, that there is no prejudice. I think that the essence of whatever was exculpatory in the government supplying you with the information, that Baer said she went along willingly. Obviously that includes cooperation, and included consent, and included anything else of exculpatory nature to show that she did not go along involuntarily against her will, and that, of course, is the essence of the crime of kidnapping. So what else do you have? So far you are not showing me anything.

MR. FINER: There was also mention that at the time that the shots were taken at Mary Shepherdson that Baer said they were just fired in any direction.

THE COURT: Of course, there is no way, and there is nothing in the testimony to show, in the Grand Jury testimony, to show that Mary Shepherdson knew that.

MR. SCELSI: Well, on page 37 Mr. Baer said, that did he have a gun in his hand at this time, and the answer was that he surely

did and he shot it aimlessly, and Tony said, "Come on, let's go, we are not getting anything done."

THE COURT: Well, you have had all of this. When did you give it to them? Was it this morning, and what time?

MR. PAVONE: This morning about 9:30.

MR. SCELSI: No, five of ten.

THE COURT: Well, we took a long lengthy recess to enable you to read whatever exculpatory matters that the government had given you. I did not put any time limit on you. We took that recess, and you had full advantage, and full opportunity to read it for your use on cross-examination.

I deny the motion. There is no prejudice of any kind, or shape or form.

MR. PAVONE: May I make one --

THE COURT: (Interrupting) You have failed to show it.

MR. PAVONE: May I make a point, since at least May 11th, 1976, counsel was aware of Mr. Baer's existence, and they knew of him and could have interviewed him from

May 11th, 1976 to the present. That is all I have to add, your Honor. Thank you.

THE COURT: I deny the motion.

MR. SCELSI: Well, along those lines we were not permitted to interview Mary Shepherdson at any time, and she was kept incommunicado all of the time, and the defense is highly prejudiced against this, and it came out at the trial, and I would move for a mistrial.

THE COURT: Denied.

MR. SCELSI: And also on the grounds that the indictment is defective inasmuch as --

THE COURT: (Interrupting) It is too late on the indictment, but I will hear your motion.

MR. SCELSI: Because they have charged that she violated --

THE COURT: (Interrupting) Who violated what?

MR. SCELSI: The defendant violated the section pertaining to -- well, 1201(a)(2) and there is no proof that the situation happened in the territorial district

and jurisdiction of the United States.

THE COURT: I don't follow you.

MR. PAVONE: Your Honor, the --

THE COURT: (Interrupting) Please sit down, Mr. Pavone, and if I want to hear from you I will ask you, and I probably won't want to hear from you.

MR. SCELSI: They are alleged to have violated Title 18 U.S. Code Section 1201(a)(2).

THE COURT: Yes?

MR. SCELSI: That is 1201(a).

THE COURT: What is wrong with the indictment?

MR. SCELSI: Pardon me? It is the incorrect --

THE COURT: (Interrupting) Not that I would be surprised if there was something wrong with it. There is something wrong with almost everyone of them here. It is the only district in this country where they can't draw an indictment.

MR. SCELSI: It is said that they violated a section which says kidnapping involving any subject against the person is

done within the special maritime and territorial jurisdiction of the United States.

THE COURT: Well, that is under 1201(a)? It says, however, unlawfully seize, and -- well, you have that.

MR. SCELSI: Well, they have had four months to clear the -- to clear up the correct area.

THE COURT: It is cited correctly, and what is wrong with it?

MR. SCELSI: 1202(a) and paragraph 2.

THE COURT: The indictment doesn't say 1201(a) paragraph 2. It says Title 18, Section 1200l, and Title 18, Section 2, which is the aiding and abetting statute.

MR. SCELSI: 12 -- well --

THE COURT: (Interrupting) That is frivolous, if I ever heard one. All right, is there a defense?

MR. SCELSI: Well, do you want us to proceed with our defense?

THE COURT: Yes, if there is one, and can you give me some idea about how long it will be?

MR. SCELSI: Probably only one person.

THE COURT: All right. Be prepared to sum up following that. Bring in the jury.

(Whereupon, the following proceedings took place before the Court and the jury.)

MR. SCELSI: Call Ronald C. Steele.

R O N A L D C. S T E E L E,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCELSI:

Q Your name, for the record, is Ronald Steele?

A Yes, sir.

Q And where do you live, Mr. Steele?

A Springville, Pennsylvania.

Q And do you recall being questioned by a law officer relative to an incident that occurred on the night of December 10th?

A Yes, sir, 1975?

Q Yes.

A Yes, sir.

Q And where were you at that particular time?

A Tending bar in South Mount Road, Rotterdam.

Q And were you working there at that time?

A Yes.

Q And at around midnight or prior to that, or around this time of the night of December 10th, did four individuals come into your office that you didn't recognize?

A Yes sir.

Q And was this gentleman here one of the individuals (indicating)?

A Yes, sir.

Q And was this gentleman over here one of the individuals (indicating)?

A Yes, sir.

Q And I am pointing to the defendant Brown.

A Yes, sir.

Q And was there another gentleman and a lady with him?

A Yes.

Q And would you describe this girl?

A She was short, and reddish-colored hair.

A Now, what did you observe when these people walked in?

A They came in and went to the back of the bar.

Q And did you observe anything unusual about any of them?

A No.

Q Except for the fact that they were strangers isn't that correct?

A Yes.

Q And did they have some drinks at the bar, or were drinks ordered?

A They ordered them at the bar, and took them to the tables, sir.

Q And you waited on them?

A Yes, sir.

Q And do you recall this because you were later --

MR. PAVONE: (Interrupting) Objection to the form of that question.

THE COURT: Sustained.

BY MR. SCELSI:

Q Were you later questioned by the Federal Bureau of Investigation about this?

A Yes, sir.

Q That is why there is a recollection, is that correct?

A Pardon?

Q This helps your recollection -- helps you recollect this particular night of December 10th, isn't that correct?

A Well, it was local enforcement, and plain clothesmen from New York State, first.

Q And then, were there other people in the bar?

A Yes, sir, five or six.

Q Now, did you notice whether or not Mary Shepherdson went to the ladies room?

A I did not see her leave the table.

MR. PAVONE: Objection, your Honor, to the form of the question.

THE COURT: Sustained. It is too late after the answer comes, Mr. Pavone.

BY MR. SCELSI:

Q At any time during the period of the night, did you observe whether or not Mrs. --

MR. PAVONE: (Interrupting) I object to the form of that question.

THE COURT: Overruled. Ask him whether or not, or what he observed.

BY MR. SCELSI:

Q With respect to the young lady?

A What did I observe?

Q Yes.

A Nothing out of the ordinary.

Q And did she stay at the table all night?

A As far as I know she stayed at the table, yes.

Q And about what time did they leave?

A At about one-thirty.

Q And about how long were they in the place?

A Approximately an hour and a half.

Q Do you recall what they were drinking?

A The young lady was drinking scotch, and they were drinking Budweiser beer, and the smaller guy was drinking, on the rocks, and it was shots of White Silver.

MR. SCELSI: Nothing else.

THE COURT: Any cross-examination?

MR. PAVONE: No, sir.

THE COURT: You are excused.

Does the defendant rest?

MR. SCELSI: We rest, your Honor.

MR. FINER: Defendant Brown rests.

THE COURT: Any rebuttal?

MR. PAVONE: No rebuttal, your Honor.

THE COURT: Sum up.

MR. PAVONE: Well, ladies and gentlemen, we have reached the end. I intend to be very brief in my remarks.

I think I told you in the beginning that it was the government's position

Judge sat there and asked her these particular questions: Were you ever arrested; were you involved in drug rip-offs, and so forth. She said, "No." She looked at the Judge, and the United States Attorney, and they set face to face, and she said, "No, no."

Well, let me read to you what this report says, and this is in evidence, and it was stipulated that it was a true report because it was subpoenaed here --

THE COURT: (Interrupting) It is not stipulated that it is a true report. It is stipulated that it is a record kept in the regular course of the Welfare Department business, and that is all.

MR. SCELSI: All right. It was regularly kept, a record kept in the course of business, and one that was made at the time of the conversations and the events, and so forth. Like if you ran a store, you make a sale, and you keep a record of it at that time.

Now, what did this say? "Mother's second drug arrest," and they are referring to Mary Wilkinson Shepherdson. "Mother's second drug arrest."

She says that, and I would submit that that is after an interview with a Peggy Russell. She says she enjoys the excitement of drug deals. And further it says that oftentimes she leaves pills lying around where children can reach them.

It also says, "Woman showed up at Sheriff's office at 2:30 a.m. on 12/28/75," and I don't know what that means.

But the important thing is that this woman told the Social Services that she enjoyed this excitement of drug dealings, and this was what this was all about, and this is the type of individual that the government wants you to rely upon to convict in this particular case. And she denied all of this, not to me, which I could expect her to do, but to the Court, the United States District Court.

Now, Mary Shepherdson is a small, little girl, no question about that, but you know, sometimes small people have more spunk than bigger people. Mary Shepherdson was at the age of 23 or 24 and is a seasoned veteran. She has been married and has been living with

two other men, that we know of. She has had welfare assistance. She was living with and without the benefit of matrimony. She has admitted to her case worker about drugs and drug rip-offs. She has admitted that she has taken drugs.

Now, she has only admitted occasional smoking of pot, and one use of cocaine. Well, I leave it to you to submit whether she was truthful, or whether she smoked pot a lot and used cocaine a lot, and this is up to you. She probably intentionally minimized her admission. There is no question about that.

Now, I believe that I have covered all of the witnesses, and I have covered this entire situation. Mary Shepherdson, who voluntarily went on this ride, who knew about it and may have had some reason for fear in Pennsylvania, after the shots were fired, but there is no evidence here that the shots were fired at her, or that she was injured. She may have been upset later, as Mr. Worst put it in his writing, but it was after the shooting, and that is not the crux of the

crime of kidnapping. The crux of the crime of kidnapping is taking her unlawfully from that house.

Mary Shepherdson --

THE COURT: (Interrupting) No, that is not the law. It is to transport her and hold her and trick her against her will. I suggest that you leave the law to me.

MR. SCELSI: The Court will tell you what the law is.

THE COURT: That is a blatant misquotation.

MR. SCELSI: The Court will tell you what the law is. The facts you will have to determine from the mouths of the witnesses, and the witness Mary Shepherdson.

Was she, who in fact was involved in this situation from December 5th practically five days prior up to that night, who was involved in it, and up to her neck, was she taken from that house, in violation of the law of the United States of America? I submit from the evidence, and her being entrenched in it, and wanting to get out of the situation, that she wanted and agreed to go with these

of the entire case. It appears to me that the entire defense in this case has been something like this: Mary Shepherdson lived an unusual life style, and because of that unusual life style she deserved exactly what happened to her on that night. Well, I submit to you, ladies and gentlemen, that regardless of your life style, the laws of the United States have to protect everybody, not just people who lead undesirable life styles.

Thank you very much.

THE COURT: As I have explained to many of you earlier, but for the benefit of some of you who are serving on the Jury for the first time: It now becomes my function to instruct you on the law which applies to this case. Now, I am the explicit judge of the law. You will recall I had to interrupt Mr. Scelsi, not because I wanted to, and I hate to interrupt a lawyer, but he was misstating the law. I am sure that was not intentional, but nevertheless, I wanted to make sure that you didn't get the wrong idea about the law.

It is my exclusive function to

tell you about the law and it is your duty to accept the law as I give it to you, whether or not you agree with it, or whether you think that the law ought to be something different from what I say it is.

Now, just as I am the exclusive judge of the law, you are the exclusive judges of the facts. You, and you alone, decide what weight, what effect, and what value you will give to the evidence; you will decide whether or not to believe a witness, and, of course, ultimately you, and you alone decide whether each defendant in this case is guilty or not guilty of the charges made against him.

Now, you are not to conclude from any rulings that I have made throughout this trial, or any questions that I have asked that I have any opinion whatsoever one way or the other as to whether any defendant is guilty or not guilty. That decision is exclusively up to you. I hesitate, always, to ask questions. It is not my function to ask questions ordinarily, but it is my function to try to make things clear so

that you understand it, and when lawyers don't do it, then the Court has to take it over.

Now, just because I have asked a question here and there doesn't mean that my questions carry any greater import than the questions of any lawyer. These are just questions. It is the answers that you are concerned with.

Now, how do you go about finding the facts? Finding the facts are merely a process by which you, the jury, consider the exhibits which have been received in evidence, consider the testimony of all of the witnesses, both on direct and on cross-examination, sift out what you believe, weigh it in the scale of your common sense, and your reasoning powers, and draw such conclusions as you believe the evidence supports and justifies, and decide just where the truth lies here.

Now, in this connection, all evidence may be of two general types; direct and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence, or when

sworn to by witnesses who have full knowledge of them, from what they have learned through the exercise of their fundamental senses. In other words, something that the witness has learned from something that he has observed, something that he heard, something that he touched, something that he smelled, something that he tasted. Circumstantial evidence simply means the drawing of a logical conclusion from other facts established by direct evidence. We all use the process in our daily lives. We draw logical conclusions from other connected facts.

If all the blinds were down and somebody came into this courtroom with an umbrella dripping with rain, you would draw the logical conclusion -- if it were dripping with water -- you would draw the logical conclusion that it was raining outdoors. The same here. There is no difference in the process.

Now, no greater degree of certainty is required when evidence is circumstantial than when it is direct. For in either case you must be convinced beyond a

reasonable doubt before you can find any defendant guilty.

Now, in this connection it is your memory of the evidence that controls and not the way I remember it; not the way counsel remembers it. If your memory squares with what the lawyers said during their summations, as their version of the evidence, you may accept what they say but to the extent that you have a different recollection of the evidence, you are bound by your oath to reject what they say, and to rely on your own memory. When I say your memory, I mean your collective memory. One or more of you may help to refresh the recollection of one or more other jurors and you should resort to that process so that you can recall the evidence.

One of your most important functions is to decide which witness you will believe, and this is so as to every witness, whether called by the government or by the defense. This also applies to the FBI agents. You are not to be influenced by the number of witnesses called. You are concerned not with the quantity, but with

the quality of the evidence. The first test which you ought to apply in determining the trustworthiness of a witness is to measure what he said as against your plain everyday common sense. You are not bound to believe unreasonable statements, or to accept testimony that defies your common sense, or insults your intelligence just because the statements are made under oath in a courtroom.

In determining whether to believe a witness you should consider not only what he said, but also his behavior and his conduct on thd stand. I saw you watching every witness with particular care as the witness testified. How did the witness impress you? Was the witness frank and honest, or was he evasive? Did his version appear to be straightforward? Was he trying to cover up or conceal any facts? Did he have any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or weak was his memory of important events? Did he forget the unforgettable? Can you rely on him? Can you trust him? Was he friendly toward any side in this case?

You ought to consider his testimony and his opportunity to know the facts about which he testified and the probability or improbability of what he said in light of the total circumstances shown in the evidence. How did his evidence add up when considered with all of the other evidence? How far does his story check out? Are there any inconsistencies in his testimony and, if so, how important are they?

Has he made any inconsistent statements on some earlier occasions, and how important is that inconsistency? And in determining whether he has made an inconsistent statement on an earlier occasion, you consider not only what he said, but what he did not say. In other words, something that he omitted on the earlier occasion.

Now, if you find that any witness has deliberately and wilfully lied with respect to any material fact in his or her testimony offered at this trial, you may follow either one of two courses: You may accept as much of the witness' testimony as you believe, or, you may reject, if you wish, his or her

entire testimony.

Now, neither defendant took the stand. A defendant is not required to take the stand and testify in his own behalf. Neither defendant has any burden of proof to sustain in this case. Both defendants have denied the charges made against them here by their plea of not guilty and they are presumed to be innocent. The fact that a defendant has not testified cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against either defendant, nor should it enter into your discussions, or deliberations in any way.

Now, before discussing the crime charged here, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inferences of guilt from the mere fact that these defendants have been indicted. An indictment simply means that these defendants have been accused of crime, and as I said, each defendant has denied the charge made against him here by

his plea of not guilty, and he has no burden of proof to sustain his case. He is under no obligation to produce any witnesses. He is presumed to be innocent and this presumption of innocence continues throughout the trial, and during your deliberations. This presumption of innocence is overcome when and only when the government establishes the guilt of a defendant beyond a reasonable doubt.

As the phrase implies, a reasonable doubt is a doubt that is based upon reason. A reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon an emotion, sympathy or prejudice, or upon what some juror might regard as an unpleasant duty. The government is not required to prove a defendant's guilt beyond every possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it. Sift out what testimony you believe. Discuss the evidence,

analyze it, weigh it, compare your view of the evidence with that of your fellow jurors. If that process produces a solemn belief or conviction in your mind, such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if that after going through that process, your mind if wavering, or so uncertain that you would hesitate to, before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and your verdict must be not guilty.

Now, the indictment here charges that on or about December 10th, 1975, within the Northern District of New York, Anthony Cavallaro and Gerald J. Brown wilfully and knowingly did transport in interstate commerce from Johnson City, New York, to the State of Pennsylvania, Mary Shepherdson, who had theretofore been unlawfully seized, inveigled, decoyed, carried away, and held by the said Anthony Cavallaro and Gerald Brown for

ransom, reward, or otherwise, that is, for the purpose of obtaining information.

The indictment then goes on to cite Title 18, United States Code, Section 1201(a), which is the kidnapping statute, and also Section 2 of the United States Code, which is the aiding and abetting statute.

So these defendants are therefore charged with kidnapping, and with aiding and abetting kidnapping.

The guilt or non-guilt of each defendant must be determined by you separately. Now, in the determination of the guilt or innocence, you must bear in mind that there are other things to consider. There is no such thing under our system of justice as by mere association. The guilt of each defendant must be determined separately with respect to him, solely on the evidence presented against him, or on the lack of evidence.

Now, this indictment is based on a federal kidnapping act, sometimes known as the Lindbergh Law, which provides in pertinent part: Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or

carries away and holds for ransome or reward, or otherwise any person when the person is wilfully transported in interstate commerce, shall be guilty of a crime.

Now, the words "seizes, confines, decoys, kidnaps or abducts, or carries away," all of them have ordinary and normal meaning. The word "inveigles" means to lure, to trick, to entice, to lead astray by false representations or promises, or other deceitful means.

The terms "interstate commerce" simply means commerce between one state and another. Therefore a person is transported in interstate commerce when he moves or is caused to be moved across state lines from here, from New York to Pennsylvania.

Now, in order to convict the defendant, whom you are considering, the government must prove to your satisfaction beyond a reasonable doubt each of the following elements: First, that the defendant transported, or aided, abetted or caused the transportation of Mary Shepherdson across state lines. Now, there is no requirement that the defendant knew or must be shown to

have known that he was transporting the victim of a kidnapping across state lines. It is sufficient that the government proves beyond a reasonable doubt that the victim was, in fact, carried across state lines.

The second element is that the defendant knowingly or wilfully seized, or confined, or inveigled, or decoyed, or kidnapped, or abducted or transported or carried away and holds Mary Shepherdson against her will.

In other words, that the person or victim was seized, transported or otherwise deprived of her liberty, without her consent.

Now, here, to kidnap, means forcibly and intentionally to abduct, or steal, or carry away a person and detain or keep or confine the person against his or her will.

Voluntariness or coercion in connection with the victim's seizure and detention is the essence of the crime. This coercion must be done with a wilful intent to confine the victim, and it may be achieved

by mental, or by instilling fear as well as by physical means.

Now, the act of holding and kidnapping a person for any purpose means the known and intentional, physical or mental restraint or seizure, transportation, for any appreciable period of time, against the person's will. Trickery, by deceit to get the person to accompany the defendants would be sufficient. It means the knowing and wilful imposition by the defendant of the physical or mental restraint upon the movements of the victim. She must knowingly be deprived of her liberty, compelled to remain where she does not wish to remain, or compelled to go where she does not wish to go.

You cannot find that she was unlawfully restrained if the evidence shows that she was perfectly free not to accompany these defendants on this ride, or if she was perfectly free to leave them at any time that she desired.

Seizure, transportation and compulsory detention against the will of the victim are the very essentials of the crime

of kidnapping. Therefore, if you find that the victim voluntarily consented to be taken for a ride, or if the ride was prearranged by her, or by any other person without the knowledge or complicity of either of these defendants, then you must find that the defendants are not guilty of the charge made here.

Now, in that connection, the victim's consent may be either expressed or implied, and in determining whether she consented you, of course, consider her own testimony. But you are not bound by that. It is not conclusive. You should also consider all of the surrounding circumstances shown in the evidence.

However, if after considering all of the evidence you find that the victim voiced or expressed a consent, if she went along with the defendants' request and cooperated with them in leaving Debbie's apartment, or in accompanying them on this ride, you still must decide whether her expressions of consent, whether her cooperation were given of her own free will or whether she was induced by

physical or mental restraint, forced, or the threat of it, or the compulsion on the part of the defendants in any way. In other words, was she acting of her own free will? Was she deprived or restrained of her liberty in any way against her will under force, or the threat of force?

The third element that the government must prove beyond a reasonable doubt is that the person kidnapped was held for reward or ransom, or otherwise. To satisfy this element the government does not need to show that there was a kidnapping for monetary gain. It is sufficient if it shows that it was for any reason. The government may not prove that the defendants ultimate purpose was illegal. It is enough that if it proves an intent to seize and hold the victim for the purpose of obtaining information about a drug rip-off, and in this connection, the question here is not whether Mary Shepherdson was a loving mother or a nice woman, or whether she was involved in drug deals, or convicted of dealing in drug deals, or knew about a drug rip-off, or even if any of those

facts were true, they do not give anyone a license to kidnap her. Nor would they, in any way, justify or excuse or constitute an offense to the wilful deprivation of her liberty by the defendants.

The fourth element is that the defendant, whom you are considering, committed the acts charged in the indictment knowingly or wilfully. Now, you will note that in discussing the crimes charged here I have said that the defendant must have acted knowingly, wilfully and unlawfully. This does not mean that the defendant must know that he is violating the federal kidnapping law. This means only that the defendant must know what he is doing. Here it means that he must consciously seize, transport or hold Mary Shepherdson against her will, and that he did so intentionally.

Unlawful means of the act must be something prohibited by law, which any such act is. In essence, then, the phrase "knowingly, wilfully and unlawfully," mean a voluntary and deliberate prohibitive pact.

In determining whether the

defendant acted knowingly and wilfully, you should consider all of the circumstances and such evidence as you recall and believe as to whether the defendant used force, fear, deception, trickery to seize, to transport or confine Mary Shepherdson against her own wishes and will.

In this connection, if you find that the defendant threatened Mrs. Shepherdson with a pistol, you may, if you wish, infer that it was loaded with bullets, capable of causing bodily harm.

You should consider any other circumstances shown in the evidence which lead you to the conclusion of whether or not the defendant acted with a conscience, and guilty knowledge that he was depriving Mary Shepherdson of her liberty without her consent. In this connection, actions speak louder than words, and we are trying to look at what was going on in the defendant's mind.

Now, in this connection, you will recall the testimony of Mr. Sampson to the effect that he was shot by the defendant Brown. You may not consider that evidence, evidence of

a subsequent similar act to be one charged here on the question of whether the defendant kidnapped Mary Shepherdson. But you may consider it on the question of whether the defendant acted intentionally, whether he had a guilty consciousness. You may also consider that evidence on the question of whether the defendant had a common plan or design and also on the question of the identity of the defendant Brown.

Also, in this connection, the Court admitted one of the exhibits taken from the files of the Welfare office. Now, that exhibit was admitted as a record kept in the regular course of business, and counsel were allowed to use it for the purpose of challenging the credibility of Mary Shepherdson when she denied that she had been involved here in drug deals, or in the rip-off. But bear in mind that a person who is the source of this document, Peggy Russell, was not here, she was not testifying under oath, she was not subject to cross-examination, so you should consider that while this document is admissible for the purposes for which I have

told you, you should consider what weight to give it.

Simply, it goes to the weight of it, and not to its admissibility. It is admitted it is a record kept in the regular course of business, and it is for you to give it such weight as you think it deserves.

In that connection, as I have told you before, we are not concerned with the character of Mary Shepherdson as it may bear on her credibility as a witness.

Now, this indictment also charges the defendants with aiding and abetting in the kidnapping. It is not necessary for the government to show that the defendant, whom you are considering, actually committed the crime of kidnapping. The law provides that a person who aids and abets another to commit a crime is just as guilty of that crime as if he committed it personally. Accordingly, you may find a defendant, whom you are considering, guilty of the crime charged in the indictment if you find, beyond a reasonable doubt, that the defendant aided or abetted some other person

in the commission of the crime. Here the government contends that each of the defendants now on trial aided and abetted the other in the commission of the crime.

Before you can convict the defendant for aiding and abetting, however, you must find that the crime was committed by someone and that the defendant whom you are considering consciously associated himself with the criminal venture, with the intent that his conduct would help it succeed. You must be convinced beyond a reasonable doubt that the defendant was doing something to aid the crime, or to forward the crime of the other person, that he was a conscious, knowing participant in the crime, with a stake in its success, rather than a mere witness, spectator, or bystander on the scene of the crime committed by another.

You should consider each defendant separately. If you find that the government has failed to prove to your satisfaction, to your satisfaction beyond a reasonable doubt, each of the elements of the crime as I have defined them, or that the government has

failed to prove that the defendant whom you are considering knowingly aided and abetted another in the commission of the crime charged in the indictment, you should return a verdict of not guilty as to that defendant.

On the other hand, if you find that the government has proved to your satisfaction, beyond a reasonable doubt, all of the elements of the crime, as I have given them to you, and/or as proved that the defendant whom you are considering knowingly aided and abetted another in the commission of the crime charged in the indictment, you should return a verdict of guilty as to that defendant.

Now, the question of possible punishment in the event of a conviction is no concern of yours, and it should not enter into or influence your deliberations. The duty of imposing sentence, in the event of a conviction, rests exclusively upon the Court.

The function of the jury is to weigh the evidence in the case, and determine the guilt or innocence of the defendant, solely upon the basis of such evidence.

When you retire to the jury room,

treat one another with consideration and respect, as I know you will. If differences of opinion arise, your discussions should be dignified, calm and intelligent. Your verdict must be based on the evidence, and the law. The evidence which was presented in this case as you remember it, and the law as I have given it to you in this charge. You are each entitled to your own opinion. No juror should acquiesce a verdict against his own conscious judgment. Nevertheless, no juror should enter a jury room with such pride of opinion that he would refuse to change his mind no matter how convincing or inte ligent the arguments of a fellow juror. Talk out your differences. Jury di cussion is the very heart of our democratic jury system. Each of you should, in effect, decide the case for himself or herself after thoroughly reviewing the evidence and frankly discussing it with your fellow jurors, with an open mind, and with a desire to reach a verdict. If you do that, you will be acting in the true democratic process of the American jury system.

There are 12 of you on this jury.

The alternates will be excused before you retire to your deliberations. Any verdict must be the unanimous verdict of all of you, and it must represent the conscience and honesty of each of you. When you retire to the jury room you will elect one of your number to act as your foreman or forelady, and to report your verdict to the Court.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury, to decide the issues submitted to you fairly, and impartially, and without favor.

Now, members of the jury, if you find that the government has failed to establish the guilt of the defendant, whom you are considering, beyond a reasonable doubt, that defendant should be acquitted. If you find that a defendant has not violated the law, you should not hesitate to render a verdict of not guilty.

But on the other hand, if you find that the government has established the guilt of the defendant beyond a reasonable

doub you should not hesitate, because of sympathy or any other reason, to render a verdict of guilty.

Your foreman or forelady, therefore, will return an oral verdict in open court, as to each defendant.

Are there any exceptions, gentlemen? If so, I will hear you up here.

MR. SCELSI: May I reserve my right to make exceptions?

THE COURT: No, I cannot reserve them. If I have made an error, I have to correct it while the jury is in the box.

MR. SCELSI: I would like to take exception to the --

THE COURT: Come up to the bench.

(Whereupon the following took place at the bench, out of the hearing of the jury.)

MR. SCELSI: Your Hono , I would like to take an exception to the charge as to kidnapping, that it must find them guilty, each defendant, knowingly or wilfully seized or confined --

THE COURT: (Interrupting) I

note your exception.

MR. SCELSI: Against their will.

THE COURT: I note your exception.

MR. SCELSI: Also, with respect to knowingly and wilfully the defendant must conscientiously seize, trar port and confine.

THE COURT: That is not what I had charged. But I note your exception, for what it is worth.

MR. SCELSI: Thank you.

THE COURT: Which is zero.

(Whereupon, the following took place before the Court and the jury.)

THE CLERK: Will the guards please step forward.

(The Marshals were sworn by the Clerk.)

THE CLERK: The alternate jurors are now excused until 10 o'clock tomorrow morning.

(Whereupon, the alternate jurors were excused.)

(Whereupon, the jury was excused to the jury room.)

THE CLERK: Court stands in

recess, awaiting the jury verdict.

(Whereupon, at 2:55 p.m. the following occurred.)

THE COURT: The jury has sent out a note asking for all of the exhibits, and we will send them in for both counsel and for the government and the counsel for the defendants agree that the only exhibit in evidence for the government is Exhibit 1, and Defendant's Exhibit A?

MR. PAVONE: Agreed.

MR. SCELSI: Yes.

MR. FINER: Yes.

THE COURT: That is all.

(Whereupon, at 3:45 p.m. the jury brought in the verdict.)

THE COURT: Please be seated.

THE CLERK: Ladies and gentlemen of the jury, have you agreed upon a verdict, and if so, how do you find, and who shall say for you?

THE FOREMAN: We have found the defendant Mr. Cavallaro guilty, and we have found Mr. Brown guilty.

THE CLERK: Harken to your verdict.

Do you say that you find the defendant, Anthony Cavallaro, guilty, and the defendant, Gerald Brown guilty, and so say you all?

(Affirmative answer by the jury.)

MR. SCELSI: May I have the jury polled, your Honor?

THE COURT: Yes.

THE CLERK: Ladies and gentlemen, as your names are called, please state your verdict.

Beverly J. Hessler, as to defendant Cavallaro?

JUROR NO. 1, BEVERLY J. HESSLER: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 1: Guilty.

THE CLERK: Beverly M. King, as to defendant Cavallaro?

JUROR NO. 2, BEVERLY M. KING: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 2: Guilty.

THE CLERK: Donald C. Weekes as to defendant Cavallaro?

JUROR NO. 3, DONALD C. WEEKES:

Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 3: Guilty.

THE CLERK: Roland L. Boda as to defendant Cavallaro?

JUROR NO. 4, ROLAND L. BODA: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 4: Guilty.

THE CLERK: John Rosenthal, as to defendant Cavallaro?

JUROR NO. 5, JOHN ROSENTHAL: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 5: Guilty.

THE CLERK: Mary Lou Forger, as to defendant Cavallaro?

JUROR NO. 6, MARY LOU FORGER: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 6: Guilty.

THE CLERK: Beverly M. Brooker, as to defendant Cavallaro?

JUROR NO. 7, BEVERLY M. BROOKER: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 7: Guilty.

THE CLERK: Joseph J. Shaw, as to defendant Cavallaro?

JUROR NO. 8, JOSEPH J. SHAW: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 8: Guilty.

THE CLERK: Mary Brown, as to defendant Cavallaro?

JUROR NO. 9, MARY BROWN: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 9: Guilty.

THE CLERK: Esther Winslow, as to defendant Cavallaro?

JUROR NO. 10, ESTHER WINSLOW: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 10: Guilty.

THE CLERK: Lorraine Powers, as to defendant Cavallaro?

JUROR NO. 11, LORRAINE POWERS: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 11: Guilty.

THE CLERK: Columbia Armenia, as to defendant Cavallaro?

JUROR NO. 12, COLUMBIA ARMENIA: Guilty.

THE CLERK: As to defendant Brown?

JUROR NO. 12: Guilty.

THE COURT: I want to thank you very much for the careful attention that you gave to this case. As you know, I never comment on what I would do if I were on the jury. That decision was entirely up to you. You are excused now until tomorrow morning at 10 o'clock.

(Whereupon, the jury was excused.)

THE COURT: Mr. Scelsi, I am not going to ask you to come up here since the jury has left. Do you have a motion at this time?

MR. SCELSI: I am sorry? Yes, I would move to set aside the verdict of the jury on the motion of acquittal, because it is contrary to the law and the facts.

THE COURT: Denied.

MR. FINER: I would join in the same motion.

THE COURT: Denied.

All right, does the government have any applications?

MR. PAVONE: Yes, your Honor, we do. We make application to the Court that the Court order the defendant Cavallaro remanded to the Attorney General, pending sentence in this case.

THE COURT: What is your grounds or your reasons?

MR. PAVONE: Yes, your Honor, the grounds are these: The defendant stands convicted of, in this Court, of a crime concerning violence, in a crime of kidnapping violence. He has a history of violent activity having been convicted of assault second degree in the state courts of New York, and various misdemeanors involving the crime of assault, third degree mostly, your Honor, and most recently of a misdemeanor of possession of a dangerous drug, and on those grounds I would request that the Court issue --

THE COURT: (Interrupting) Any threats of any violence against any witness?

MR. PAVONE: Not recently.

THE COURT: At any time have there been?

MR. PAVONE: No, your Honor, none that I know of.

THE COURT: How recent are there convictions of assault? I am asking the prosecutor. You will be heard in due course.

MR. PAVONE: 1968 was a conviction for assault second degree.

THE COURT: And what were the facts about that?

MR. PAVONE: The facts were, as I understand it, that Mr. Cavallaro assaulted a girl with a beer bottle. That was in -- he was arrested in March, March 22nd, 1968, and convicted on September 17th, 1968.

THE COURT: Is that on a plea or on a trial?

MR. PAVONE: That was pursuant to a trial.

THE COURT: What were the others?

MR. PAVONE: The others, your Honor, I do not have the specific facts in connection with the other offenses.

THE COURT: What were the dates?

MR. PAVONE: Assault third degree, your Honor, February 14th, 1967. Then assault third degree, February 16th, 1968. Criminal mischief, misdemeanor, your Honor, September 25th, 1975.

The felony conviction that I just alluded to was on August 21st, 1971, criminal possession of a dangerous drug, [illegible]th degree and that is a misdemeanor, also, your Honor. That was dated August 21st.

THE COURT: How old was the defendant, Cavallaro?

MR. PAVONE: The defendant's age escapes me at the moment. I really don't know.

THE COURT: Then I wouldn't say you are well prepared in your motion. He is married?

MR. PAVONE: Yes, he is.

THE COURT: Does he have a family?

MR. PAVONE: I understand he has children.

THE COURT: Where does he live, and where does he work?

MR. PAVONE: He lives in Tioga

County, New York, and I believe he is in the construction business. He is a laborer in the construction industry. A laborer, your Honor. That is the information that we have on the defendant.

I believe that he is 29 or 30 years old. That is my recollection.

THE COURT: Mr. Scelsi?

MR. SCELSI: We would ask that the defendant be considered to be continued at liberty. The convictions are some time ago. The defendant has been out on his own recognizance, since he was arraigned here, or arraigned in Federal Court. He is married, and his wife is in the courtoom here with him, and his parents are here. He has two children, and he was gainfully employed up to now, except for this period of this trial, and he has his own home, and is living with his wife and two children. Most of these problems that he was in were years ago. He is now 33 years of age.

I would respectfully submit that if this man had any intention of not complying with the order of the Court, he would have long

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since been gone.

As I said, he has been on his own recognizance. I would ask that he be continued there until sentencing, because of a hardship and what he will eventually face. He has a family and children, and I have known him for a period of years, and I know he has no intention of violating any order of this Court.

He has made no threats to anyone that I know of at any time.

Therefore, I would respectfully submit with this incident about the bottle, it was some time ago, and there was no great injury to anyone. It was a slight scratch.

THE COURT: Kind of fun, with a coke bottle?

MR. SCELSI: I don't know whether it was partly accident, but it was some time ago.

THE COURT: He was convicted, and I assume it was intentional. I don't know who gets convicted of a crime without an intent to do it.

MR. SCELSI: This was back in

1968,.and I don't know what the circumstances were except that he was not incarcerated. The Court, at that time, Judge Fisher gave him a one-year probation.

He does have a family, and his wife is here in the courtoom, and he is married.

THE COURT: We are dealing here of course, with a very vicious and serious federal crime. Now, it is not with some state misdemeanor or some state crime, but a vicious federal crime.

The defendant's guilt beyond a reasonable doubt has been determined by a jury. The evidence was virtually overwhelming. It was a crime of violence, and he has a history of other crimes of violence. The evidence shows he is in the dope business, or was involved in it to some point where he was willing to commit a vicious crime like this, for money.

A young firl, half his size, he has to bring along another man twice the size of the size of this girl.

It was a vicious, serious crime. In fact, it is the most vicious, serious crime

to come before me in the 17 years on the federal bench in the City of New York, dealing with all kinds of criminals.

He is a danger to the community. He faces a substantial sentence up to life imprisonment. While he was released on his own recognizance, that may have been all right pending trial, when he obviously hoped not to be convicted. Those considerations no longer attain. He now faces life imprisonment, and that is a strong inducement to flee.

The evidence here shows that he is a person without restraint, without any sense of law abiding, and who takes the law of his own making into his own hands, with merciless violence, and also there is no substantial question on appeal, and an appeal here would be frivolous in light of the evidence.

Accordingly, the Court grants the motion to remand the defendant, and revokes bail pending sentencing, which will be September 16th, at ten o'clock.

I take it the other defendant is already in custody?

MR. PAVONE: He is in custody in the Tioga County Jail on local charges.

THE COURT: How long is that going to be? Has he been convicted?

MR. PAVONE: No. I do not know when he will be brought to trial on the local charges.

THE COURT: I suggest that you make your appropriate motion for that.

MR. PAVONE: Yes. I would move, then, in connection with the defendant Brown, that he be sent to the Tioga County Jail immediately and remanded to the custody of the Attorney General of the United States. If he should be released by the Tioga County officials, prior to sentencing in this Court, he should be held.

THE COURT: Any objection?

MR. FINER: No, your Honor.

THE COURT: The motion is granted. He will be remanded to the United States Attorney General in the event that he is released from state custody. I order a pre-sentence investigation on both defendants.

THE CLERK: Court stands in

recess until 10:00 a.m. tomorrow.

(Whereupon, the court stood in recess.)

* * *

REPORTER'S CERTIFICATE

I, HIRAM F. SHEFFER, Official Court Reporter, in and for the United States District Court, Northern District of New York, do certify the foregoing record to be a true and accurate transcription of the proceedings had at the time and place noted in the heading hereof.

Hiram F. Sheffer
Official Court Reporter
U.S. District Court
Northern District

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